6–9–06 Friday
Vol. 71 No. 111 June 9, 2006

Pages 33375–33592

# Federal Register

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# Contents

**Federal Register**

Vol. 71, No. 111

Friday, June 9, 2006

**Agriculture Department**
*See* Food and Nutrition Service
*See* Food Safety and Inspection Service
*See* Forest Service
*See* Natural Resources Conservation Service
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33434–33435

**Alcohol, Tobacco, Firearms, and Explosives Bureau**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33485–33486

**Blind or Severely Disabled, Committee for Purchase From People Who Are**
*See* Committee for Purchase From People Who Are Blind or Severely Disabled

**Broadcasting Board of Governors**
**NOTICES**
Meetings; Sunshine Act, 33438

**Centers for Disease Control and Prevention**
**NOTICES**
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 33456
Immunization Practices Advisory Committee, 33456–33457

**Centers for Medicare & Medicaid Services**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33457–33461

**Children and Families Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33461

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Committee for Purchase From People Who Are Blind or Severely Disabled**
**NOTICES**
Procurement list; additions and deletions, 33437–33438

**Defense Nuclear Facilities Safety Board**
**NOTICES**
Meetings; Sunshine Act, 33442

**Education Department**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—
Disability and Rehabilitation Research Projects, 33562–33576
State Personnel Development Program, 33578–33585

**Employment and Training Administration**
**NOTICES**
Adjustment assistance; applications, determinations, etc.:
Agilent Technologies, Inc., 33486
Cytech Hardwood, Inc., 33486–33487
Eastman Kodak Co., 33487
Ethox International, Inc., et al., 33487–33489
GE Aviation, 33489
Glomar Steel Co., 33489
Kimberly-Clark, 33489
Kmart, 33489–33490
Tenneco, Inc., 33490
Triangle Suspension Systems, Inc., 33490

**Energy Department**
**NOTICES**
Electricity export and import authorizations, permits, etc.:
BP Energy Co., 33442–33443
Meetings:
National Petroleum Council, 33443

**Environmental Protection Agency**
**RULES**
Air pollutants, hazardous; national emission standards:
Electric utility steam generating units and removal of coal- and oil-fired electric utility steam generating units from Section 112(c) list and mercury performance standards, 33388–33402
**PROPOSED RULES**
Air quality implementation plans; approval and promulgation; various States:
Nevada, 33413–33416
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Potassium permanganate, etc., 33416–33419
**NOTICES**
Confidential business information and data transfer, 33444
Environmental statements; availability, etc.:
Agency comment availability, 33444–33445
Agency weekly receipts, 33445–33446
Environmental statements; notice of intent:
Chuitna Coal Project, AK, 33446
Pesticide registration, cancellation, etc.:
Bioprodex, Inc., et al., 33446–33448
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Azinphos-methyl and phosmet, 33448–33449
Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 33449–33454

**Executive Office of the President**
*See* Presidential Documents
*See* Trade Representative, Office of United States

**Federal Aviation Administration**
**PROPOSED RULES**
Airworthiness directives:
Pratt & Whitney, 33412–33413

**Federal Highway Administration**
**PROPOSED RULES**
Planning assistance and standards:
Statewide and metropolitan transportation planning, 33510–33560

**Federal Reserve System**
**NOTICES**
Banks and bank holding companies:
Formations, acquisitions, and mergers, 33454
Meetings:
Consumer Advisory Council, 33454–33455

**Federal Transit Administration**
**PROPOSED RULES**
Planning assistance and standards:
Statewide and metropolitan transportation planning, 33510–33560
**NOTICES**
Reports and guidance documents; availability, etc.:
New Starts Program—
Small starts, 33503–33504

**Food and Drug Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33461
Food additive petitions:
Alltech, Inc.; withdrawn, 33462
Human drugs:
Carbinoxamine products; enforcement action dates, 33462–33465
Patent extension; regulatory review period determinations—
CETROTIDE, 33465–33466
Reports and guidance documents; availability, etc.:
Compliance policy guide; marketed unapproved drugs, 33466–33467

**Food and Nutrition Service**
**RULES**
Food Stamp Program:
Farm Security and Rural Investment Act of 2002; implementation—
Employment and Training Program, 33376–33384

**Food Safety and Inspection Service**
**NOTICES**
Meetings:
Codex Alimentarius Commission—
Agenda items and draft U.S. positions to be discussed at 29th session of CAC; comments request, 33435–33436

**Forest Service**
**NOTICES**
Meetings:
Resource Advisory Committees—
Siskiyou County, 33436–33437

**General Services Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33455

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Children and Families Administration
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration
**NOTICES**
Meetings:
Medicaid Commission, 33455–33456

**Health Resources and Services Administration**
**PROPOSED RULES**
National Vaccine Injury Compensation Program:
Calculation of average cost of a health insurance policy, 33420–33423

**Homeland Security Department**
*See* Transportation Security Administration
**NOTICES**
Meetings:
Homeland Security Advisory Council, 33477–33478

**Housing and Urban Development Department**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 33479

**Interior Department**
*See* Land Management Bureau
*See* National Park Service

**International Trade Administration**
**NOTICES**
Antidumping:
Heavy forged hand tools, finished or unfinished, with or without handles from—
China, 33438–33439
Countervailing duties:
Pasta from—
Turkey, 33439–33441

**International Trade Commission**
**NOTICES**
Import investigations:
Baby socks, 33483–33484
Insulin delivery devices, including cartridges having adaptor tops, and components, 33484
Pipe and tube from—
Various countries, 33484–33485
Meetings; Sunshine Act, 33485

**Justice Department**
*See* Alcohol, Tobacco, Firearms, and Explosives Bureau

**Labor Department**
*See* Employment and Training Administration
*See* Mine Safety and Health Administration

**Land Management Bureau**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33479–33481
Oil and gas leases:
Arkansas, 33481–33482
West Virginia, 33482

**Maritime Administration**
**NOTICES**
Coastwise trade laws; administrative waivers:
CONUNDRUM, 33504–33505
PHOENIX, 33505

**Millennium Challenge Corporation**
**NOTICES**
Meetings; Sunshine Act, 33491

**Mine Safety and Health Administration**
**RULES**
Metal and nonmetal mine safety and health:
Underground mines—
Diesel particulate matter exposure of miners; outreach seminars, 33387–33388
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33490–33491

**National Highway Traffic Safety Administration**
**NOTICES**
Motor vehicle safety standards; exemption petitions, etc.:
Volkswagen of America Inc., 33505–33506

**National Institutes of Health**
**NOTICES**
Inventions, Government-owned; availability for licensing, 33467–33468
Meetings:
National Cancer Institute, 33468–33469
National Heart, Lung, and Blood Institute, 33469–33470
National Institute of Allergy and Infectious Diseases, 33471
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 33471–33472
National Institute of General Medical Sciences, 33470–33471
National Institute on Aging, 33470
Scientific Review Center, 33472–33475

**National Oceanic and Atmospheric Administration**
**PROPOSED RULES**
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Snapper-grouper, 33423–33432
West Coast States and Western Pacific fisheries—
Pacific coast groundfish management plan, 33432–33433
**NOTICES**
Meetings:
New England Fishery Management Council, 33441–33442

**National Park Service**
**NOTICES**
National Register of Historic Places; pending nominations, 33482–33483

**National Science Foundation**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33492

**Natural Resources Conservation Service**
**NOTICES**
Environmental statements; availability, etc.:
Matanuska River Terrace Erosion Area Acquisition Pilot Project, AK, 33437

**Nuclear Regulatory Commission**
**NOTICES**
Environmental statements; availability, etc.:
Fox Chase Cancer Center Facility, PA, 33493–33494
Regulatory guides; issuance, availability and withdrawal, 33494–33495

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Personnel Management Office**
**RULES**
Veterans' preference:
Veteran definition; individuals discharged or released from active duty, preference eligibility clarification; conformity between veterans' preference laws, 33375–33376

**Pipeline and Hazardous Materials Safety Administration**
**RULES**
Pipeline safety:
Technical standards; regulatory references update, 33402–33411
**NOTICES**
Hazardous materials:
Special permit applications delayed; list, 33506–33507

**Presidential Documents**
**PROCLAMATIONS**
*Special observances:*
Father's Day (Proc. 8030), 33591–33592
Flag Day and National Flag Week (Proc. 8029), 33587–33590

**Securities and Exchange Commission**
**RULES**
Emergency conditions; organization and operation plan, 33384–33387
**NOTICES**
Self-regulatory organizations; proposed rule changes:
NYSE Arca, Inc., 33496–33501

**Small Business Administration**
**NOTICES**
Disaster loan areas:
Alabama, 33501
Louisiana, 33501–33502
Mississippi, 33502
Texas, 33502

**Substance Abuse and Mental Health Services Administration**

**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33475–33477

**Surface Transportation Board**
**NOTICES**
Motor carrier applications, exemptions, etc.:
Grupo Senda Autotransporte, S.A. de C.V., et al., 33507

**Trade Representative, Office of United States**
**NOTICES**
World Trade Organization:
Dispute settlement panel proceedings—
Thailand; antidumping measures on shrimp, 33495–33496

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Transit Administration
*See* Maritime Administration
*See* National Highway Traffic Safety Administration
*See* Pipeline and Hazardous Materials Safety Administration
*See* Surface Transportation Board
**NOTICES**
Aviation proceedings:
Agreements filed; weekly receipts, 33502–33503

**Transportation Security Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33478–33479

**Treasury Department**
*See* United States Mint

**United States Mint**
**NOTICES**
Meetings:
Citizens Coinage Advisory Committee, 33507–33508

**Separate Parts In This Issue**

**Part II**
Transportation Department, Federal Highway Administration; Transportation Department, Federal Transit Administration, 33510–33560

**Part III**
Education Department, 33562–33576

**Part IV**
Education Department, 33578–33585

**Part V**
Executive Office of the President, Presidential Documents, 33587–33592

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

**Proclamations:**

8029.....33589
8030.....33591

**5 CFR**

211.....33375

**7 CFR**

272.....33376
273.....33376

**14 CFR**

**Proposed Rules:**

39.....33412

**17 CFR**

200.....33384

**23 CFR**

**Proposed Rules:**

450.....33510
500.....33510

**30 CFR**

57.....33387

**40 CFR**

60.....33388

**Proposed Rules:**

52.....33413
180.....33416

**42 CFR**

**Proposed Rules:**

100.....33420

**49 CFR**

192.....33402
193.....33402
195.....33402

**Proposed Rules:**

613.....33510

**50 CFR**

**Proposed Rules:**

622.....33423
660.....33432

# Rules and Regulations

Federal Register
Vol. 71, No. 111
Friday, June 9, 2006

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 211

**RIN 3206–ALOO**

### Veterans' Preference

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement statutory changes to veterans' preference contained in the National Defense Authorization Act for FY 2006. These changes expand the definition of a veteran and clarify veterans' preference eligibility for individuals discharged or released from active duty. The intended effect of these changes is to provide conformity between veterans' preference laws and OPM regulations, to further ensure that job seeking veterans receive the preference to which they are entitled.

**DATES:** Interim rule effective June 9, 2006; comments must be received on or before August 8, 2006.

**ADDRESSES:** Send or deliver written comments to Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail *employ@opm.gov*; fax: (202) 606–2329. Comments may also be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Scott A. Wilander by telephone at (202) 606–0960; by fax at (202) 606–0390; TTY at (202) 606–3134; or by e-mail at *Scott.Wilander@opm.gov.*

**SUPPLEMENTARY INFORMATION:** The National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, was signed into law by the President on January 6, 2006, containing two provisions (sections 1111 and 1112 of Title XI) which amend section 2108(1) of title 5, United States Code. Section 1111 of Title XI of the Act expands the definition of a veteran in 5 U.S.C. 2108(1) to include individuals who served on active duty for more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom. OPM is revising its regulation by adding this new definition to § 211.102(a) consistent with this statutory change. In addition, we are taking this opportunity to revise § 211.102(a) to include anyone who served on active duty during the period beginning August 2, 1990, and ending January 2, 1992, as previously established by the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85).

The National Defense Authorization Act for Fiscal Year 2006 also amended 5 U.S.C. 2108(1) by clarifying that individuals who are released or discharged from active duty in the armed forces, as opposed to being separated from the armed forces, may receive veterans' preference provided these individuals meet other applicable veterans' preference eligibility requirements. Because this clarification requires agencies to give the same effect to a ''release or discharge from active duty'' as they would to a ''separation from the armed forces,'' we are modifying the definition of a veteran in § 211.102(a) of this Part to be consistent with this statutory clarification. We are also modifying the definition of a disabled veteran in § 211.102(b) to be consistent with the change to § 211.102(a) and amendments to 5 U.S.C. 2108(1).

Lastly, we are amending § 211.102(g) to correspond with the changes in § 211.102(a) and (b). This amendment replaces the term ''Separated under honorable conditions'' with ''Discharged or released from active duty'' consistent with the statutory change contained in the Act. This new definition does not alter the requirement that a discharge or release from active duty must be under honorable conditions (i.e., an honorable or general discharge).

### Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Waiver of advance notice is necessary to ensure that the regulations become effective immediately and agencies understand completely their obligations under the amendments to 5 U.S.C. 2108(1) and do not unwittingly deny veterans' preference based upon regulations that are now obsolete. If OPM's regulations were permitted to remain as currently written, while OPM solicited comments upon its proposed revisions, there is a chance that reservists recently released from active duty in Iraq or Afghanistan, for example, might be denied veterans' preference based upon the language of the current regulations. In light of the sacrifices being made by individuals who do not serve full time in the armed forces, but who have been called to active duty for significant periods of service, the public interest lies with immediate publication, subject to subsequent revisions after comments are received and fully evaluated. The revised language in the interim regulation will ensure that returning individuals discharged or released from active duty in the armed forces receive the veterans preference to which they are entitled under statute.

### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

### List of Subjects in 5 CFR Part 211

Government employees, Veterans.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

■ Accordingly, OPM is amending part 211 of title 5, Code of Federal Regulations, as follows:

## PART 211—VETERAN PREFERENCE

■ 1. The authority for part 211 continues to read as follows:

**Authority:** 5 U.S.C. 1302.

■ 2. In § 211.102, revise paragraphs (a), (b), and (g) to read as follows:

**§ 211.102 Definitions.**

* * * * *

(a) *Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed—

(1) In a war; or,

(2) In a campaign or expedition for which a campaign badge has been authorized; or

(3) During the period beginning April 28, 1952, and ending July 1, 1955; or

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976; or

(5) During the period beginning August 2, 1990, and ending January 2, 1992; or

(6) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom.

(b) *Disabled Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a statute administered by the Department of Veterans Affairs or a military department.

* * * * *

(g) *Discharged or released from active duty* means with either an honorable or general discharge from active duty in the armed forces. The Department of Defense is responsible for administering and defining military discharges.

[FR Doc. E6–8962 Filed 6–8–06; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 273

**RIN 0584–AD32**

## Food Stamp Program: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the proposed provisions of a rule published on March 19, 2004 to amend Food Stamp Program regulations to codify Food Stamp Employment and Training (E&T) Program provisions of section 4121 of the Farm Security and Rural Investment Act of 2002 (the Farm Bill). This final rule establishes a reasonable formula for allocating the 100 percent Federal grant authorized under the Farm Bill to carry out the E&T Program each fiscal year. This final rule also codifies the Farm Bill provision that makes available up to $20 million a year in additional unmatched Federal E&T funds for State agencies that commit to offer an education/training or workfare opportunity to every applicant and recipient who is an able-bodied adult without dependents (ABAWD), limited to 3 months of food stamp eligibility in a 36-month period, who would otherwise be terminated. This final rule eliminates the current Federal cost-sharing cap of $25 per month on the amount State agencies may reimburse E&T participants for work expenses other than dependent care. This final rule codifies Farm Bill provisions that expand State flexibility in E&T Program spending by repealing the requirements that State agencies earmark 80 percent of their annual 100 percent Federal E&T grants to serve ABAWDs; they meet or exceed their fiscal year 1996 State administrative spending levels to access funds made available by the Balanced Budget Act of 1997; and the Secretary be given the authority to establish maximum reimbursement costs of E&T Program components. Lastly, this final rule rescinds the balance of unobligated funds carried over from fiscal year 2001.

**DATES:** This final rule is effective August 8, 2006.

**FOR FURTHER INFORMATION CONTACT:** Micheal Atwell, Senior Program Analyst, Program Design Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, 3101 Park Center Drive, Room 810, Alexandria, Virginia, 703–305–2449, or via the Internet at *micheal.atwell@fns.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This final rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

### Executive Order 12372

The Food Stamp Program (FSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that OMB approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The information collections in this rule were previously approved under OMB control number 0584–0339. The rules in 7 CFR 273.7(d)(1)(i)(D) provide that, if a State Agency will not obligate or expend all of the funds allocated to it for a fiscal year (FY), the Food and Nutrition Service (FNS) will distribute the unobligated, unexpended funds during the current or subsequent FY on a first come-first served basis. State Agencies may request more funds, as needed. Typically, FNS receives nine such requests per year. The burden associated with OMB control number 0584–0339 has been revised by adding 9 hours to it to account for the time it takes State Agencies to prepare the

requests. The additional 9 hours were approved by OMB on August 22, 2005.

**Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not regulate the activities of small businesses or other small entities; instead it regulates the administration of the FSP, which is administered only by State or county social service agencies.

**Unfunded Mandate Analysis**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of section 202 and 205 of UMRA.

**Executive Order 13132**

*Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

*Prior Consultation With State Officials*

Prior to drafting the rule, we received input from State and local agencies at various times. Since the FSP is a State administered, federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we presented our ideas and received feedback on program policy at various State, regional, national, and professional conferences. Lastly, the comments from State and local officials on the proposed Farm Bill rule were carefully considered in drafting this final rule.

*Nature of Concerns and the Need To Issue This Rule*

State agencies generally want greater flexibility in their implementation of FSP work requirements and in the operation of the E&T Program. State agencies have indicated that providing them this flexibility would greatly enhance their ability to more efficiently administer the FSP. They also want current rules streamlined to allow them to conform to the rules of other means tested Federal programs.

*Extent to Which FNS Meets Those Concerns*

FNS has considered the impact on State and local agencies. This rule deals with changes required by law, which were effective on May 13, 2002. The overall effect is to lessen the administrative burden by providing increased State agency flexibility in E&T Program spending.

**Government Paperwork Elimination Act**

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. State agencies have the option of submitting the Food Stamp Employment and Training Activity Report (FNS–583) (OMB 0584–0339 electronically via the Food Program Reporting System. Also, State agencies may submit their applications for additional Federal operating funds via e-mail.

**Civil Rights Impact Analysis**

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to mitigate its impact on the protected classes. Other than how to allocate E&T funds among State agencies, FNS had no discretion in implementing any of these changes, which were effective upon enactment of the Farm Bill on May 13, 2002. All data available to FNS indicate that protected individuals have the same opportunity to participate in the FSP as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. (FSP nondiscrimination policy can be found at 7 CFR 272.6(a)). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

**Regulatory Impact Analysis**

*Need for Action*

This action is needed to implement the provisions of section 4121 of the Farm Bill, which sets forth funding directives for the E&T program. Because the rules resulting from section 4121 will have generally applicability, they are best accomplished through regulatory action. The provisions of this regulation establish a reasonable formula for allocating the 100 percent Federal grant authorized under the Farm Bill to carry out the E&T Program each fiscal year; make available up to $20 million a year in additional unmatched Federal E&T funds for State agencies that commit to offer an education/training or workfare opportunity to every ABAWD applicant and recipient who would otherwise be terminated after 3 months of food stamp eligibility in a 36-month period (3-month time limit); eliminate the current Federal cost-sharing cap of $25 per month on the amount State agencies may reimburse E&T participants for work expenses other than dependent care; repeal the requirement that State agencies earmark 80 percent of their annual 100 percent Federal E&T grants to serve ABAWDs; and repeal the requirement that State agencies meet or exceed their FY 1996 State administrative spending levels to access

funds made available by the Balanced Budget Act of 1997.

*Benefits*

State agencies will benefit from the provisions of this rule because they streamline the annual E&T Program grant allocation process, expand State agency flexibility in serving at-risk ABAWDs and other work registrants, and eliminate unnecessary and complex rules on how State agencies can spend E&T Program funds.

*Costs and Participation Impacts*

The regulatory impact analysis associated with this rule reports that the E&T provisions of the Farm Bill are expected to reduce Federal outlays by $36 million in FY 2005 and by $188 million in the 5 years FY 2005 through FY 2009 (see Table 1). In accordance with OMB circular A–4, FNS has used a pre-statutory baseline (FY2002) for this analysis. Because these provisions have already taken effect, it was possible to compare this pre-legislative baseline to current expectations for spending on E&T using the President's FY 2006 budget baseline, the most recent data available at the time of analysis. These assumptions have also been incorporated in the President's FY 2007 budget. The annual cost of the provisions was measured as the difference between the two cost streams. The standard E&T outlay factor of 84 percent was applied to the difference in expected obligations to estimate the expected impact on E&T outlays. This methodology assumes that differences between the pre-legislative baselines and post-reform projections are entirely due to the impact of provisions in this rule-making. To the extent that other outside factors have influenced E&T provision and spending, the impacts of this provision could be over-or understated.

TABLE 1.—COST IMPACT OF E&T PROVISIONS OF THE FARM BILL OF 2002 (FEDERAL OUTLAYS)

[In millions of dollars]

| | 2005 | 2006 | 2007 | 2008 | 2009 | 5-year |
|---|---|---|---|---|---|---|
| 100% E&T Grants | −36 | −35 | −36 | −39 | −42 | −188 |
| 50% E&T Grants | 18 | 19 | 20 | 21 | 21 | 99 |
| Participant Reimbursements | 6 | 6 | 6 | 6 | 7 | 31 |
| Participant Benefit Impact | −24 | −27 | −27 | −26 | −26 | −130 |
| Total Impact | −36 | −37 | −37 | −38 | −40 | −188 |

The items identified in Table 1 are described in more detail below:

* *100% E&T Grants.* The cost to the government of the provisions on 100 percent Federal E&T grants was estimated based on expected 100 percent E&T obligations prior to the legislation ($130 million in FY 2002), indexed by economic projections from the Office of Management and Budget.

* *50% E&T Grants.* The cost to the Government of the provisions on 50 percent Federal E&T grants was based on expected 50 percent E&T obligations prior to the legislation ($107 million in FY 2002), indexed by economic projections from the Office of Management and Budget.

* Participant Reimbursements. The cost to the Government of the provisions on E&T participant reimbursements was based on expected obligations prior to the legislation ($31 million in FY 2002), indexed by economic projections from the Office of Management and Budget.

*Participant Benefit Impact.* With new flexibility and decreased Federal E&T funding, some States likely reduced the level of E&T services they provide to ABAWDs, thereby making them ineligible for food stamps. Based on data from the FNS–583 FNS estimated that 14,000 persons were made ineligible by these provisions in FY 2005. These impacts are already incorporated in the President's FY 2007 budget baseline. State agencies have already implemented any applicable changes and no further impact is expected following publication of this final rule. The savings in food stamp benefits was calculated based on the estimated number of ABAWDs made ineligible times the average monthly benefit per ABAWD, times 12 months. These savings were rounded to the nearest million dollars. (For example, in FY 2005, 14,000 persons were made ineligible, times an average food stamp benefit of $141, times 12 months to yield a savings of $24 million.) The standard food stamp benefit outlay factor of 0.99 was used to estimate the impact on benefit outlays.

While this regulatory impact analysis details the expected impacts on Food Stamp Program costs and the number of participants likely to be affected by the food stamp employment and training provisions of the Farm Security and Rural Investment Act of 2002, it does not provide an estimate of the overall societal costs of the provisions, nor does it include a monetized estimate of the benefits they bring to society. We anticipate that the provisions improve program operations by giving flexibility to States to provide employment and training services that better meet the needs of their food stamp populations. However, to the extent that some food stamp recipients are made ineligible, the provisions have made it more difficult for them to obtain a healthful diet.

**Background**

On March 19, 2004, FNS published a rule at 69 FR 12981 in which we proposed to revise food stamp regulations at 7 CFR 273.7 regarding funding for the E&T Program. Comments on this proposed revision were solicited through May 18, 2004. A total of 24 comments were received. This final rule addresses the commenters' concerns. Readers are referred to the proposed rule for a more complete description of the basis for the rule. Following is a discussion of the provisions of the proposed rule, the comments received, and changes made in the final rule.

**Funding for Food Stamp Employment and Training Programs**

*Allocation of E&T Grants*

FNS proposed to allocate one-half of the annual 100 percent Federal grant based on our estimate of the numbers of ''at-risk'' ABAWDs in each State (those who do not reside in an area subject to a waiver of the time limit or who are not included in each State agency's 15 percent ABAWD exemption allowance) calculated using ABAWD data collected by Mathematica Policy Research, Incorporated (MPR) for its September 2001 report, ''Imposing a Time Limit on Food Stamp Receipt: Implementation of the Provisions and Effects on Food Stamp Program Participation.'' Based on the MPR study data, FNS established percentages for the numbers of waived and/or exempted ABAWDs in each State

and applied those percentages to Quality Control (QC) survey data to estimate each State agency's at-risk ABAWD population. FNS believed this to be the most accurate and reliable data available. FNS proposed to allocate the balance of the annual 100 percent E&T grant based on the number of work registrants reported by each State agency on the FNS–583, E&T Program Activity Report from the most recent complete FY.

FNS received 22 comments regarding our proposed allocation methodology. Twenty commenters objected to our reliance on at-risk ABAWDs. They were concerned that this reliance would discourage States from using the two measures available to protect the eligibility of ABAWDs who are unable to obtain employment. The first measure is to request that FNS waive the time limit for a group of ABAWDs in a State if we determine that the area in which the individuals reside has an unemployment rate of over 10 percent or does not have a sufficient number of jobs to provide employment for the individuals. The second measure is the State option to exempt up to 15 percent of its ABAWD population that does not reside in waived areas each FY. The commenters point out that, by utilizing these measures, States will receive smaller E&T grants than if they had not used them. Several commenters pointed out that more than a few States have statewide waivers of the time limit due to high unemployment or a lack of jobs and these States will lose half of their potential annual E&T grants as a result. Several State agencies pointed out that the formula ignores the fact that waived and exempted ABAWDs are work registrants subject to E&T participation and, although they currently provide E&T services to exempt ABAWDs and to ABAWDs in waived areas, they will have to curtail or terminate these services because of reduced grants.

Two commenters argued that FNS has flexibility under the law to adopt a formula that better serves the ABAWD population. They believe that the concept of ''at-risk ABAWDs'' should be significantly revised or dropped and that FNS should adopt a more practical approach to the requirement that it take into account the numbers of individuals not exempt from the work requirement under section 6(o) of the Food Stamp Act. They believe that FNS should consider other factors and apply necessarily inexact measures of those numbers.

Eight commenters recommended that the ABAWD allocation be based on the total number of ABAWDs, not just at-risk ones. Three recommended that the entire grant be based on total ABAWDs. Several recommended that FNS use the most recent QC household characteristics data (OMB 0584–0299) that reflects each State's share of the nation's food stamp recipients who are age 18 through 49, not disabled, and who do not live with children.

One State agency recommended using a funding ratio of 10 to 20 percent based on at-risk ABAWDs, 80 to 90 percent on work registrants.

One State agency recommended using a multi-part formula that averages the number of ABAWDs determined from the QC sample and the number of ABAWDs participating in components that meet the ABAWD work requirement as reported on the FNS–583, E&T Program Activity Report. It also urged that State agencies be informed of the numbers to be used and given the opportunity to challenge them if they disagree.

One State agency recommended that all 100 percent Federal E&T funds be allocated based on a point system that favors at-risk ABAWDs. It proposes assigning a value of 1.0 to all mandatory work registrants, excluding ABAWDs, and assigning a value of 1.3 to all ABAWDs.

One State agency recommended using an allocation formula based one-half on the number of E&T work registrants and one-half on the number of ABAWD E&T participants.

FNS agrees with those commenters concerned that adhering to the proposed 50/50 split of the 100 percent Federal grant places too much emphasis on ABAWDs. The E&T program has two constituencies—ABAWDs subject to the time limit who need services that qualify them to remain eligible for benefits until they are able to find employment; and all other work registrants who also need services to improve their ability to become self-sufficient. Under the proposed split, a State's ABAWD population would determine half its grant amount; and, since all ABAWDs are work registrants, they would be counted again in determining the other half. For the FY 2005 $90 million grant allocation, FNS allocated $80 million based on work registrants and $10 million on at-risk ABAWDs. In addition, to lessen the negative impact on those State agencies with a large waived and exempted ABAWD population, FNS limited the cut in grant funding to no more than 20 percent of the FY 2004 grant allocations. Our experience with the FY 2005 E&T grant allocation convinced us that the appropriate share to be allocated based on numbers of ABAWDs is 10 percent of the grant, with 90 percent allocated based on the overall universe of work registrants. We have incorporated this ratio into the final rule.

FNS also agrees with the commenters who urged us to take a different approach to how we accomplish the annual allocation. FNS carefully considered each comment and weighed the suggested funding strategies against the statutory requirement that we take into account at-risk ABAWDs. FNS examined several alternatives for using data to capture the most reliable estimate of the numbers of ABAWDs in each State. The use of at-risk ABAWD estimates for each State was, of course, most desirable. However, after careful review FNS determined that these numbers were difficult to obtain and unreliable, due both to technical considerations and to continual shifts in the numbers of waived and exempted ABAWDs in most States. To ensure a reasonably accurate count of at-risk ABAWDs, State agencies would most likely have to create new computer programming and reporting requirements for at-risk ABAWDs. FNS does not believe that such an additional State agency reporting burden is desirable or necessary. For the FY 2006 $90 million grant allocation, FNS used food stamp QC data for the most recently available completed FY (FY 2004) which reflected total ABAWD numbers instead of at-risk ABAWD estimates. The data, which is state-compiled and federally reviewed, provide a breakdown of each State's population of adults age 18 through 49, who are not disabled, and who do not live with children. These data mirror ABAWD characteristics, are readily and widely available, are consistent with commenters' requests, and, when compared to the less current percentages established by the September 2001 MPR study, provide a more reliable estimate of the numbers of all ABAWDs in each State. Our experience indicates that using total ABAWD numbers is the most efficient, equitable way to allocate the ABAWD portion of the annual E&T grant, with currently available data-while still adhering to the statutory requirement to take into account at-risk ABAWDs. This approach has the advantage over our earlier proposal in that it does not reduce funding for States that rely on waivers and exemptions, thus does not serve as a disincentive to use those tools.

While some commenters questioned the validity of work registrant data from the FNS–583, E&T Program Activity Report, FNS remains convinced that it provides the most reliable work registration information available. State

agencies have been collecting and reporting work registrant data on the FNS–583 for many years and they are proficient in accurately counting their work registrants. Prior to 1996, the annual E&T grants were allocated based primarily on FNS–583 work registrant data. In addition, the universal use of computers and the development of sophisticated software to track program participation and compliance with eligibility requirements make the accurate calculation of the number of work registrants a relatively simple procedure. Finally, FNS has been working closely with states over the last few years to correct instances of misreporting E&T data.

Thus, in response to comments and based on our experience, FNS is amending the final rule at 7 CFR 273.7(d)(1)(i)(B) to establish that 10 percent of the annual 100 percent Federal E&T grant will be allocated among the 53 State agencies based on food stamp QC data for the most recently available completed FY that reflects each State's share of the nation's food stamp recipients who are age 18 through 49, not disabled, and who do not live with children, as a percentage of such individuals nationwide.

The remaining 90 percent will be allocated based on the numbers of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS–583, Employment and Training Program Activity Report, from the most recent Federal FY.

*Additional Funding for States That Serve ABAWDs*

The proposed rule contained the provision of an additional $20 million in 100 percent Federal E&T funds each FY to be allocated among eligible State agencies to serve all ABAWDs subject to the time limit. To be eligible for a share of the additional $20 million, the Department proposed that a State agency must make and comply with a commitment, or pledge, to offer a qualifying education/training activity or workfare position to each ABAWD applicant or recipient who is ''at risk,'' *i.e.*, one who is in the last month of the 3-month time limit; does not live in an area covered by a waiver of the time limit; and is not part of a State agency's 15 percent ABAWD exemption allowance. FNS proposed to allocate among them the $20 million based on the 2001 MPR study's estimate of the numbers of ABAWDs in each participating pledge State who do not reside in an area subject to a waiver granted in accordance with 7 CFR 273.24(f) or who are not included in each State agency's 15 percent ABAWD exemption allowance under 7 CFR 273.24(g), as a percentage of such ABAWDs in all the participating pledge States. Eligible State agencies must use their shares of the $20 million allocation to defray costs incurred in serving at-risk ABAWDs.

Three commenters objected to our methodology. Two recommended that the allocation formula include all ABAWDs. One recommended that the money be allocated based on actual services provided and not just on the population eligible for service.

For the reasons cited in the above discussion concerning the regular Federal E&T allocation, the Department agrees that the allocation formula should include all ABAWDs. While making it clear that the first priority of a participating State agency is to guarantee that all its at-risk ABAWDs are provided the opportunity to remain eligible while they acquire the skills and experience necessary to obtain employment, the Department, in the proposed rule, provided the option of allowing the State agency to use a portion of its additional funding to provide E&T services to ABAWDs who are not at risk. However, if a State agency uses waivers and/or its exemption allowance to protect all of its ABAWDs from the time limit, it is not eligible to share in the $20 million. Therefore, the formula included in this final rule bases the allocation of a participating pledge state's share of the $20 million on the total number of ABAWDs in the State as a percentage of ABAWDs in all participating States. For the reasons discussed in the previous section, the number of ABAWDs will be derived from QC data and not from the MPR study. One commenter urged that FNS revise this final regulation to properly reflect what it is that a State must pledge to do in order to be eligible for its share of the $20 million ABAWD allocation. The cost of serving at-risk ABAWDs is not an acceptable reason to fail to live up to the pledge. In other words, a slot must be available and the ABAWD must be served even if the State exhausts all of its 100 percent E&T funds and must use 50 percent State matching funds to serve all at-risk ABAWDs. This commenter believes that the language of the proposed regulation implied that to meet the pledge States have to pledge only to use their share of the $20 million to serve these individuals.

The Department agrees. FNS has added language to the final rule to clarify that a participating pledge State must serve all its at-risk ABAWDs, and it must be prepared to use its own money to fulfill its commitment.

*Allocation of Carryover Funding*

The Department, in the proposed rule, provided for the first come-first served reallocation of unspent 100 percent Federal E&T grant funds carried over into the subsequent FY. FNS would notify all State Agencies of the availability of the funds each year.

One commenter pointed out that State Agencies that may benefit from an allocation of carryover funds to augment their annual grants will not be aware of the availability of such funds until after critical program adjustments must be made.

FNS agrees that State Agencies may find it difficult to rely on carryover funding because they are notified of its availability well into the annual budget and spending cycle. However, FNS does not know how much carryover funding remains until completion of the close-out of financial accounts for the preceding year, which is not normally accomplished until the second quarter of the current year. Thus, FNS is unable to allocate available carryover funding until that time.

FNS urges interested State Agencies to submit their requests for carryover funding, with accompanying justification, as early as possible in the FY. FNS will act upon the requests as quickly as possible.

**Participant Reimbursements**

The Farm Bill eliminated the $25 per month per participant limitation on Federal cost sharing for reimbursement for the costs of transportation and other actual costs other than dependent care.

One commenter believes that the language of the proposed rule related to the E&T State plan suggests that there is only one reimbursement rate for participant expenses other than dependent care. States may desire to have different reimbursement policies for households that experience different types of expenses, or they may want to establish different levels of reimbursement for different areas of the State where, for example, costs of transportation are higher. The commenter recommends that FNS revise the language to allow for more than one reimbursement rate for transportation and other expenses.

The Department agrees that the language of the E&T State plan provision relating to participant reimbursements should be revised to allow for varying rates of reimbursements. This final rule will include language in 7 CFR 273.7(c)(6)(xv) to clarify that, if the State

agency proposes to provide different reimbursement amounts to account for varying levels of expenses, for instance, for greater or lesser costs for transportation in different areas of the State, it must include them here.

One commenter encourages FNS to consider allowing E&T reimbursement for participants for up to 30 days following placement into unsubsidized employment. Mandatory participants may not receive their first paycheck for up to four weeks. This causes hardships for E&T participants who need to get back and forth to work until they receive a paycheck. Also, the participant may have a need for employment-related items such as clothing, work boots, bonding, tools, etc. once a job is accepted.

FNS believes that expanding the range of possible covered costs eligible for a Federal match for reimbursement is desirable because doing so supports the goal of the E&T Program to help food stamp applicants and recipients obtain employment and achieve self-sufficiency. In our discussion of expanded reimbursements in the proposed rule we stated that expenses such as license and bonding fees required for employment, for which the E&T participant is liable, could also be considered for reimbursement by State agencies. However, after reviewing comments on the proposed rule and reconsidering the scope of the E&T Program, FNS wants to take this opportunity to amend that statement. While we understand wanting to support employed persons, the use of Federal funds to provide services associated with starting and keeping a job is beyond the scope of the E&T Program and must be disallowed.

Congress established the E&T Program to assist members of households participating in the FSP in gaining skills, training, work, or experience that will increase their ability to obtain regular employment. It defined an E&T program as one that contains one or more components providing job search; job search training; workfare; actual work experience or training, or both; educational programs or activities; self-employment activities; and, as approved by the Secretary, other employment, education and training programs, projects, and experiments. Lastly, Congress required that Federal funds provided to a State agency may be used only for operating an E&T program as defined. It required that States may be reimbursed 50 percent of their costs incurred in connection with transportation costs and other expenses reasonably necessary and directly related to participation in an E&T program as defined.

Based on this language in the Food Stamp Act and on the legislative history of the E&T Program, Congress clearly intended to limit the scope of the Program to preparing for and obtaining employment. Post-employment services were never part of the Program's mandate.

One reason for this limitation is the relatively small Federal grant authorized by Congress to fund the Program. With limited resources, along with the requirement to provide qualifying education and training opportunities that allow ABAWDs to remain eligible beyond the 3-month time limit, the Program must focus on relatively inexpensive components designed to provide basic services.

Further, although some States may desire more flexibility to align their E&T policies on participant reimbursements with those for Temporary Assistance for Needy Families (TANF) work supportive services, the significant differences that exist between the E&T and TANF work programs preclude FNS from allowing States to cover the entire array of expenditures considered suitable under TANF guidelines. These differences involve the nature of the authorizing legislation and funding mechanisms (block grant with time-limits versus Federal entitlement with limited education and training funds), the range of purposes served, the degree to which exemptions are available, and the sizes of the populations receiving benefits.

Since the E&T Program is defined by its components and all the components are designed to enable participants to obtain jobs, reimbursing the costs of goods and services associated with employment retention are beyond the scope of what can be allowed. Thus, FNS must limit participation reimbursements to those costs involved in successful component participation and disallow costs associated with starting and keeping a job once one has been offered.

Keep in mind, however, that employed individuals may participate in regular, approved E&T program components and receive participant reimbursements to cover their expenses. For example, an individual works less than 30 hours a week, or earns less than the Federal minimum wage equivalent of 30 hours. The individual—who is otherwise eligible for food stamps and is subject to all program work requirements, including E&T—is assigned to and participates in a General Equivalency Diploma (GED) preparation component. The State agency is authorized to claim reimbursement for any administrative costs associated with the individual's participation, as well as half of the costs of participant expenses, such as transportation, course materials, etc.

**Reduction in Work Effort**

In the proposed rule FNS clarified its policy concerning reduction in work effort. We proposed to amend the regulations to state that an individual exempt from FSP work requirements because he or she is working a minimum of 30 hours a week who reduces his or her work hours to less than 30, but who continues to earn more in weekly wages than the Federal minimum wage multiplied by 30 hours, remains exempt from FSP work requirements and is not subject to disqualification.

One commenter supports the clarification of the minimum wage equivalency as it applies to the reduction in work effort. The commenter does, however, recommend that the final rule clarify when States should and should not apply the minimum wage equivalency analysis. The commenter points out that the work hours of low-skill workers typically fluctuate considerably from month to month. Many small reductions in work hours occur either involuntarily or for good cause. The commenter believes that FNS can reduce administrative burdens on State agencies and households alike by specifying in the final rule that reductions of 5 hours or less do not trigger a sanction.

The Department agrees that such situations sometimes occur, resulting in a work week less than 30 hours or weekly earnings less than the minimum wage equivalency. State agencies must take such situations into account when determining whether a disqualification for reduction in work effort should apply. However, FNS disagrees that provision for a 5-hour leeway is appropriate. By initiating such a policy, FNS would, in effect, alter the federally mandated 30-hour minimum.

The Department has, in this final rule, included a reminder to State agencies that minor variations in the number of hours worked or in the weekly minimum wage equivalent wages are inevitable and must be taken into consideration when assessing a recipient's compliance with Program work rules.

**State E&T Plans**

FNS is taking this opportunity to make a technical correction to the language at 7 CFR 273.7(c)(7), which requires that State agencies submit their

State E&T Plans biennially. FNS is revising this to annual submissions. While the basics of E&T plans, such as components offered and program reporting and coordination methodologies, may remain constant, the requirement for annual participation, budget, and funding estimates, along with a discussion of program changes, and other pertinent information demands a yearly submission, which State agencies do. This correction acknowledges that requirement. Although we did not address this issue in the preamble to the proposed rule, FNS did inadvertently include the revised regulatory language. FNS did not receive any comments concerning the change.

**List of Subjects**

*7 CFR Part 272*

Administrative practice and procedures, Food stamps, Grant programs-social programs.

*7 CFR Part 273*

Administrative practice and procedures, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping.

■ Accordingly, 7 CFR parts 272 and 273 are amended as follows:

■ 1. The authority citation for parts 272 and 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. In § 272.1, add paragraph (g)(172) to read as follows:

### § 272.1 General terms and conditions.

* * * * *

(g) * * *

(172) Amendment No. 400. The provisions of Amendment No. 400, regarding the Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002 are effective August 8, 2006.

### § 272.2 [Amended]

■ 3. In § 272.2, paragraph (e)(9) is amended by removing the reference to ''§ 273.7(c)(7)'' and adding in its place a reference to ''§ 273.7(c)(8)''.

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 4. In § 273.7:

■ a. paragraph (c)(6)(ii) is amended by removing the period at the end of sentence three and adding in its place a semi-colon, and by removing the last sentence

■ b. paragraph (c)(6)(vii) is revised;

■ c. new paragraphs (c)(6)(xv) and (c)(6)(xvi) are added;

■ d. paragraphs (c)(7), (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), and (c)(14) are redesignated as paragraphs (c)(8), (c)(9), (c)(10), (c)(11), (c)(12), (c)(13), (c)(14), and (c)(15), respectively, and new paragraph (c)(7) is added;

■ e. newly redesignated paragraph (c)(8) is amended by removing the word ''biennially'' in the first sentence and adding in its place the word ''annually'';

■ f. newly redesignated paragraphs (c)(9), (c)(10), and (c)(11) are revised;

■ g. paragraph (d)(1)(i) is revised;

■ h. paragraph (d)(1)(ii) is amended by removing paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D), and redesignating paragraphs (d)(1)(ii)(E), (d)(1)(ii)(F), (d)(1)(ii)(G), and (d)(1)(ii)(H) as paragraphs (d)(1)(ii)(A), (d)(1)(ii)(B), (d)(1)(ii)(C), and (d)(1)(ii)(D), respectively;

■ i. paragraphs (d)(1)(iii) and (d)(1)(iv) are removed;

■ j. paragraphs (d)(3), (d)(4), (d)(5), and (d)(6) are redesignated as (d)(4), (d)(5), (d)(6), and (d)(7), respectively, and new paragraph (d)(3) is added;

■ k. newly redesignated paragraph (d)(4) introductory text is amended by adding a new second sentence after the first sentence of the introductory text, removing the references ''paragraphs (d)(3)(i) and (d)(3)(ii)'' in sentences four and seven and adding in their place the references ''paragraphs (d)(4)(i) and (d)(4)(ii)'', and by removing the references ''paragraphs (d)(3)(i) and (d)(3)(ii)'' in sentence eight and adding in its place the reference ''paragraph (d)(4)(i)'';

■ l. newly redesignated paragraph (d)(4)(i) is amended by removing the last sentence;

■ m. newly redesignated paragraph (d)(4)(ii) is amended by removing the last sentence;

■ n. newly redesignated paragraph (d)(4)(v) is amended by removing the reference ''paragraphs (d)(3)(i) and (d)(3)(ii)'' in the second sentence and adding in its place the reference ''paragraphs (d)(4)(i) and (d)(4)(ii)'', and removing the reference ''paragraph (d)(3)(i)'' in the last sentence and adding in its place the ''paragraph (d)(4)(i)'';

■ o. paragraph (f)(7)(ii) is amended by removing the reference ''paragraphs (b)(1)(iii) and (b)(1)(v)'' in the second sentence and adding in its place the reference ''paragraphs (b)(1)(iii) or (b)(1)(v)'';

■ p. paragraph (f)(7)(iv) is amended by removing words ''exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v)'' in the first sentence and adding in their place the words ''exemption in paragraph (b)(1)(iii)'';

■ q. paragraph (j)(3)(iii) is amended by removing the last sentence and adding two new sentences in its place.

The revisions and additions read as follows:

### § 273.7 Work provisions.

* * * * *

(c) * * *

(6) * * *

(vii) The method the State agency uses to count all work registrants as of the first day of the new fiscal year;

* * * * *

(xv) The combined (Federal/State) State agency reimbursement rate for transportation costs and other expenses reasonably necessary and directly related to participation incurred by E&T participants. If the State agency proposes to provide different reimbursement amounts to account for varying levels of expenses, for instance for greater or lesser costs of transportation in different areas of the State, it must include them here.

(xvi) Information about expenses the State agency proposes to reimburse. FNS must be afforded the opportunity to review and comment on the proposed reimbursements before they are implemented.

(7) A State agency interested in receiving additional funding for serving able-bodied adults without dependents (ABAWDs) subject to the 3-month time limit, in accordance with paragraph (d)(3) of this section, must include in its annual E&T plan:

(i) Its pledge to offer a qualifying activity to all at-risk ABAWD applicants and recipients;

(ii) Estimated costs of fulfilling its pledge;

(iii) A description of management controls in place to meet pledge requirements;

(iv) A discussion of its capacity and ability to serve at-risk ABAWDs;

(v) Information about the size and special needs of its ABAWD population; and

(vi) Information about the education, training, and workfare components it will offer to meet the ABAWD work requirement.

* * * * *

(9) The State agency will submit an E&T Program Activity Report to FNS no later than 45 days after the end of each Federal fiscal quarter. The report will contain monthly figures for:

(i) Participants newly work registered;

(ii) Number of ABAWD applicants and recipients participating in qualifying components;

(iii) Number of all other applicants and recipients (including ABAWDs involved in non-qualifying activities) participating in components; and

(iv) ABAWDs subject to the 3-month time limit imposed in accordance with § 273.24(b) who are exempt under the State agency's 15 percent exemption allowance under § 273.24(g).

(10) The State agency will submit annually, on its first quarterly report, the number of work registrants in the State on October 1 of the new fiscal year.

(11) The State agency will submit annually, on its final quarterly report:

(i) A list of E&T components it offered during the fiscal year and the number of ABAWDs and non-ABAWDs who participated in each; and

(ii) The number of ABAWDs and non-ABAWDs who participated in the E&T Program during the fiscal year. Each individual must be counted only once.

* * * * *

(d) * * *

(1) * * *

(i) Allocation of grants. Each State agency will receive a 100 percent Federal grant each fiscal year to operate an E&T program in accordance with paragraph (e) of this section. The grant requires no State matching.

(A) In determining each State agency's 100 percent Federal E&T grant, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(B) of this section to the total amount of 100 percent Federal funds authorized under section 16(h)(1)(A) of the Act for each fiscal year.

(B) FNS will allocate the funding available each fiscal year for E&T grants using a formula designed to ensure that each State agency receives its appropriate share.

(*1*) Ninety percent of the annual 100 percent Federal E&T grant will be allocated based on the number of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS–583, Employment and Training Program Activity Report, from the most recent Federal fiscal year.

(*2*) Ten percent of the annual 100 percent Federal E&T grant will be allocated based on the number of ABAWDs in each State, as determined by food stamp QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(C) No State agency will receive less than $50,000 in Federal E&T funds. To ensure this, FNS will, if necessary, reduce the grant of each State agency allocated more than $50,000. In order to guarantee an equitable reduction, FNS will calculate grants as follows. First, disregarding those State agencies scheduled to receive less than $50,000, FNS will calculate each remaining State agency's percentage share of the fiscal year's E&T grant. Next, FNS will multiply the grant—less $50,000 for every State agency under the minimum—by each remaining State agency's same percentage share to arrive at the revised amount. The difference between the original and the revised amounts will represent each State agency's contribution. FNS will distribute the funds from the reduction to State agencies initially allocated less than $50,000.

(D) If a State agency will not obligate or expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i)(B) of this section, FNS will reallocate the unobligated, unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year on a first come-first served basis. Each year FNS will notify all State agencies of the availability of carryover funding. Interested State agencies must submit their requests for carryover funding to FNS. If the requests are determined reasonable and necessary, FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable. The factors that FNS will consider when reviewing a State agency's request will include the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program and proposed use of carryover funds.

* * * * *

(3) *Additional allocations.* In addition to the E&T program grants discussed in paragraph (d)(1) of this section, FNS will allocate $20 million in Federal funds each fiscal year to State agencies that ensure availability of education, training, or workfare opportunities that permit ABAWDs to remain eligible beyond the 3-month time limit.

(i) To be eligible, a State agency must make and comply with a commitment, or ''pledge,'' to use these additional funds to defray the cost of offering a position in an education, training, or workfare component that fulfills the ABAWD work requirement, as defined in § 273.24(a), to each applicant and recipient who is:

(A) In the last month of the 3-month time limit described in § 273.24(b);

(B) Not eligible for an exception to the 3-month time limit under § 273.24(c);

(C) Not a resident of an area of the State granted a waiver of the 3-month time limit under § 273.24(f); and

(D) Not included in each State agency's 15 percent ABAWD exemption allotment under § 273.24(g).

(ii) While a participating pledge State may use a portion of the additional funding to provide E&T services to ABAWDs who do not meet the criteria discussed in paragraph (d)(3)(i) of this section, it must guarantee that the ABAWDs who do meet the criteria are provided the opportunity to remain eligible.

(iii) State agencies will have one opportunity each fiscal year to take the pledge described in paragraph (d)(3)(i) of this section. An interested State agency, in its E&T Plan for the upcoming fiscal year, must include the following:

(A) A request to be considered as a pledge State, along with its commitment to comply with the requirements of paragraph (d)(3)(i) of this section;

(B) The estimated costs of complying with its pledge;

(C) A description of management controls it has established to meet the requirements of the pledge;

(D) A discussion of its capacity and ability to serve vulnerable ABAWDs;

(E) Information about the size and special needs of the State's ABAWD population; and

(F) Information about the education, training, and workfare components that it will offer to allow ABAWDs to remain eligible.

(iv) If the information provided in accordance with paragraph (d)(3)(iii) of this section clearly indicates that the State agency will be unable to fulfill its commitment, FNS may require the State agency to address its deficiencies before it is allowed to participate as a pledge State.

(v) If the State agency does not address its deficiencies by the beginning of the new fiscal year on October 1, it will not be allowed to participate as a pledge State.

(vi) No pledges will be accepted after the beginning of the fiscal year.

(vii)(A) Once FNS determines how many State agencies will participate as pledge States in the upcoming fiscal year, it will, as early in the fiscal year as possible, allocate among them the $20 million based on the number of ABAWDs in each participating State, as a percentage of ABAWDs in all the participating States. FNS will determine the number of ABAWDs in each

participating State using food stamp QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(B) Each participating State agency's share of the $20 million will be disbursed in accordance with paragraph (d)(6) of this section.

(C) Each participating State agency must meet the fiscal recordkeeping and reporting requirements of paragraph (d)(7) of this section.

(viii) If a participating State agency notifies FNS that it will not obligate or expend its entire share of the additional funding allocated to it for a fiscal year, FNS will reallocate the unobligated, unexpended funds to other participating State agencies during the fiscal year, as it considers appropriate and equitable, on a first come-first served basis. FNS will notify other pledge States of the availability of additional funding. To qualify, a pledge State must have already obligated its entire annual 100 percent Federal E&T grant, excluding an amount that is proportionate to the number of months remaining in the fiscal year, and it must guarantee in writing that it intends to obligate its entire grant by the end of the fiscal year. A State's annual 100 percent Federal E&T grant is its share of the regular 100 percent Federal E&T allocation plus its share of the additional $20 million (if applicable). Interested pledge States must submit their requests for additional funding to FNS. FNS will review the requests and, if they are determined reasonable and necessary, will reallocate some or all of the unobligated, unspent ABAWD funds.

(ix) Unlike the funds allocated in accordance with paragraph (d)(1) of this section, the additional pledge funding will not remain available until obligated or expended. Unobligated funds from this grant must be returned to the U.S. Treasury at the end of each fiscal year.

(x) The cost of serving at-risk ABAWDs is not an acceptable reason to fail to live up to the pledge. A slot must be made available and the ABAWD must be served even if the State agency exhausts all of its 100 percent Federal E&T funds and must use State funds to guarantee an opportunity for all at-risk ABAWDs to remain eligible beyond the 3-month time limit. State funds expended in accordance with the approved State E&T Plan are eligible for 50 percent Federal match. If a participating State agency fails, without good cause, to meet its commitment, it may be disqualified from participating in the subsequent fiscal year or years.

(4) * * * The Federal government will fund 50 percent of State agency payments for allowable expenses, except that Federal matching for dependent care expenses is limited to the maximum amount specified in paragraph (d)(4)(i) of this section. * * * * * * * * *

(j) * * *

(3) * * *

(iii) * * * If the individual reduces his or her work hours to less than 30 a week, but continues to earn weekly wages that exceed the Federal minimum wage multiplied by 30 hours, the individual remains exempt from Program work requirements, in accordance with paragraph (b)(1)(vii) of this section, and the reduction in work effort provision does not apply. Minor variations in the number of hours worked or in the weekly minimum wage equivalent wages are inevitable and must be taken into consideration when assessing a recipient's compliance with Program work rules.

* * * * * *

**§ 273.24 [Amended]**

■ 5. In § 273.24, paragraph (a)(4)(i) is amended by removing the reference ''§ 273.22'' and adding in its place the reference ''§ 273.7(m)''.

Dated: June 1, 2006.

**Kate Coler,**

*Deputy Under Secretary, Food, Nutrition and Consumer Services.*

FR Doc. E6–9001 Filed 6–8–06; 8:45 am]

**BILLING CODE 3410–30–P**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 200

**[Release No. 34–53937; File No. S7–10–06]**

**RIN 3235–AJ56**

## Amendments to Plan of Organization and Operation Effective During Emergency Conditions

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting amendments to certain of its rules that operate in the event of emergency conditions to revise the provisions on delivering submittals, the line of succession to the Chairman in the event of the Chairman's incapacity or unavailability, and make conforming changes. These changes are intended to update these provisions.

**DATES:** *Effective Date:* June 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Jung, Assistant General Counsel for Legislation and Financial Services, Office of the General Counsel, at (202) 551–5162.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Subpart G of Part 200 of Title 17 of the Code of Federal Regulations ''describes the plan of organization and operation which will be observed by the Securities and Exchange Commission in discharging its duties and responsibilities in the event of [specified emergency conditions].'' [1] It includes provisions for designating the location of the offices of the Commission; delivering requests, filings, reports, or other submittals to the Commission; and designating the successor to the Chairman and the division and office heads in the event of their incapacity or unavailability during emergency conditions.

### II. Summary of Amendments

The amendments provide guidance on certain terms used in subpart G; revise the provisions on delivering requests, filings, reports, or other submittals during emergency conditions; revise the line of succession to the Chairman in the event of the Chairman's incapacity or unavailability during emergency conditions; and make conforming changes.

*A. Guidance on General Terms*

The amendments provide guidance on the terms ''unavailable or incapacitated'' and ''emergency conditions,'' as used in subpart G.

1. *Unavailable or Incapacitated.* The amendments clarify that a person shall be considered unavailable or incapacitated in any situation and from any cause that prevents the person from assuming or performing on a timely basis his or her authorized duties, roles, or responsibilities of office, whether from a primary or alternate facility, or any other location. This language is intended to be a general statement of the concepts of unavailability and incapacity rather than an exhaustive definition of the terms. The statement is a flexible one that is intended to cover unforeseen, and perhaps novel, circumstances.

2. *Emergency Conditions.* The amendments also provide that emergency conditions shall be deemed to commence upon the occurrence, or the imminent threat of the occurrence, of a natural or man-made disturbance

[1] 17 CFR 200.200.

including, but not limited to, an armed attack against the United States, its territories or possessions, terrorist attack, civil disturbance, fire, pandemic, hurricane, or flood, that results in, or threatens imminently to result in, a substantial disruption of the organization or operations of the Commission. Such conditions shall be deemed to continue until the Commission shall, by notice or order, resume its normal organization and operations, whether at its headquarters in Washington, DC or elsewhere.

The prior concept of emergency conditions contemplated that emergency conditions would ''commence at the time of an armed attack upon the United States, its territories and possessions, at the time of official notification of the likelihood or imminence of such attack, or at a time specified by authority of the President, whichever may first occur, and shall continue until official notification of cessation of such conditions.'' [2] Recent global developments, however, have demonstrated the need for a broader concept of emergency conditions, one that encompasses all hazards that may substantially disrupt the normal organization or operations of the Commission. This broader concept is the basis for the revised definition of emergency conditions.

While the ''all hazards'' approach embodied in the new definition of emergency conditions is broad, not all disturbances that might affect the operations of the Commission will trigger the commencement of emergency conditions. For example, a number of events could require closure or evacuation of the Commission's headquarters in Washington, DC without substantially disrupting the Commission's operations. In most circumstances a snow emergency, water leak, disruption of water service, temporary power outage, localized fire, fire alarm, or other condition that might require the temporary closure or evacuation of all or a part of the headquarters would not trigger the commencement of emergency conditions.

The ''all hazards'' approach in the new definition of emergency conditions also underlies the Commission's current Headquarters Continuity of Operations (''HQ COOP'') Plan, which establishes operational procedures to sustain the essential functions of the Commission during any emergency or situation that may disrupt normal operations. The Commission expects that, in most circumstances, the occurrence, or the imminent threat of the occurrence, of a disturbance that leads to full or partial activation of the HQ COOP Plan also will trigger the commencement of emergency conditions.

Under the HQ COOP Plan, the Chairman is responsible for directing full or partial activation of the HQ COOP Plan. The Chairman may be unavailable or incapacitated, however, upon the occurrence, or the imminent threat of the occurrence, of a disturbance that likely will require activation of the HQ COOP Plan. In that situation, it would be useful to invoke the chairman succession provisions in 17 CFR 200.203(c)(1), so that the Chairman's successor could determine whether or not to activate the HQ COOP Plan. Because the succession provisions become operative only during emergency conditions, however, a definition of emergency conditions that was limited to situations in which the Chairman already had activated the HQ COOP Plan would be problematic. Thus, the definition of emergency conditions contemplates that such conditions commence upon the occurrence, or the imminent threat of the occurrence, of certain disturbances, rather than upon an official response or reaction to the disturbance.[3]

*B. Operation of Subpart G*

Prior 17 CFR 200.201 included language that indicated when the provisions of subpart G would be operative. Specifically, the language stated that subpart G would become operative ''as at the commencement of emergency conditions and continue until cessation of those conditions, or until the Commission shall by notice or order resume its normal operations.'' This language is no longer necessary, because of all of the provisions in subpart G are contingent upon the existence of emergency conditions,[4] and the revised definition of ''emergency conditions'' specifies that emergency conditions will continue until the Commission shall, by notice or order, resume its normal organization and operations.

*C. Delivery of Documents*

The amendments also revise the provision on delivering requests, filings, reports, or other submittals during emergency conditions. The revised provision specifies that, during emergency conditions, all formal or informal requests, filings, reports, or other submittals shall be submitted to the Commission as permitted in non-emergency conditions, unless the Chairman or his or her successor specifies another means or location for submission of such requests, filings, reports, or other submittals, by a notice that is disseminated through a method (or combination of methods) that is reasonably designed to provide broad distribution of the information to the public.

The prior provision contemplated that all submittals would be ''delivered to the Commission at designated offices'' or addressed to an address no longer used by the Commission. The reference to ''designated offices'' was a reference to the requirement in 17 CFR 200.20(a) that the Chairman, or his or her successor, designate, during emergency conditions, the location of headquarters and, if different from the normal location, each Regional and District office.[5] The new provision provides the Chairman with greater flexibility to designate a location for submission of formal or informal requests, filings, reports, or other submittals during emergency conditions. For example, the Chairman may find it appropriate, during emergency conditions, to designate a location geographically remote from headquarters, whether at its normal location or a new location, for the submission of filings that ordinarily would be submitted to the headquarters. The new provision also enables the Chairman to specify a different means for the submission of requests, filings, reports, or other submittals during emergency conditions. In this regard, the new provision accommodates the fact that many filings now are required or permitted to be submitted to the Commission in electronic format.

During emergency conditions, persons may experience difficulties submitting requests, filings, reports, or other submittals to the Commission, whether by normal means or by means otherwise specified by the Chairman. These difficulties could arise from disruptions at the location of the person seeking to

[2] 17 CFR 220.201.

[3] In most circumstances, a Continuity of Operations message directing the Securities and Exchange Commission to assume a COGCON 1 readiness posture will be issued as a result of an event that triggers the commencement of emergency conditions and also leads to activation of the HQ COOP Plan.

[4] Prior 17 CFR 200.204 was not explicitly contingent on the existence of emergency conditions. However, as discussed below, the amendments make a conforming change to this section to clarify that it operates only under such conditions.

[5] In the absence of communication with the Chairman, 17 CFR 200.20(a) specifies that, during emergency conditions, the Regional Director or District Administrator for an office, or his acting successor, will designate the location of the office, if different from the normal location.

make the submittal, disruptions in the means of transmittal (for example, breakdowns in mail services, electronic transmission facilities, or courier services), or disruptions at the location of the Commission office to which the submittal is attempted to be made. In such cases, the person could seek,[6] or the Commission on its own initiative could provide, appropriate relief. Of course, the ability to seek or provide relief may be hindered by disruptions in communications between persons seeking to make submittals and the Commission.

Because the nature of any relief would be dictated by the specific circumstances of any disruptions, and the Commission has broad authority to provide relief in appropriate circumstances, the amended provision does not address directly the consequences of a disruptions in the ability to submit requests, filings, reports, or other submittals during emergency conditions. The provision, however, does provide some flexibility for responding to disruptions in the ability to transmit requests, filings, reports, or other submittals by allowing the Chairman to specify the means and/or location for submission during emergency conditions.

*D. Succession Provisions*

The amendments revise the line of succession to the Chairman in the event of the Chairman's incapacity or unavailability during emergency conditions. Specifically, the amendments revise the current order of succession within the categories of Division Directors, Regional Directors, and District Administrators so that that the order of succession in each category will be as designated by the Chairman in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority. The current order of succession within these categories is based on seniority. The change would give the Chairman the flexibility to accommodate the fact that, at any given time, there may be particular areas of expertise that might militate in favor of an order not based strictly on seniority. In addition, the amendments eliminate the Executive Director and the Executive Assistant to the Chairman from the line of succession.

[6] For example, if a submittal is required to be transmitted to the Commission electronically, but electronic transmission is disrupted at the time the submittal is due, the filer could seek appropriate relief, including pursuant to 17 CFR 232.13(b), 232.201, or 232.202.

*E. Other Provisions*

The amendments also revise 17 CFR 200.203(e), which currently provides for a line of succession to a division or office head in the event of his or her absence or incapacity during emergency conditions. The amendments make a conforming change and specify that a successor to a division or office head is delegated all of the authority that the Commission has delegated to the division or office head. Currently, a successor to a division or office head may discharge all of the duties of the division or office head, but is not explicitly delegated all of the authority that the Commission has delegated to the division or office head. In addition, the amendments make a conforming change to 17 CFR 200.204, which sets forth the line of succession for certain administrative staff, to clarify that the provision applies only during emergency conditions.

## III. Related Matters

*A. Administrative Procedure Act and Other Administrative Laws*

The Commission has determined that these amendments to its rules relate solely to the agency's organization, procedure, or practice. Therefore, the provisions of the Administrative Procedure Act (''APA'') regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[7] For the same reason, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.[8] In addition, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.[9] Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[10]

*B. Cost-Benefit Analysis*

The Commission is sensitive to the costs and benefits imposed by its rules. The Commission believes that the amendments to its rules that it is adopting today will produce the benefit of providing greater clarity to the plan of organization and operation that will be observed by the Commission in discharging its duties and responsibilities during certain emergency conditions. The Commission also believes that these rules will not impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

[7] 5 U.S.C. 553(b).

[8] 5 U.S.C. 804.

[9] 5 U.S.C. 601–612.

[10] 44 U.S.C. 3501–3520.

*C. Consideration of Burden on Competition*

Section 23(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. The Commission does not believe that the amendments that the Commission is adopting today will have any impact on competition.

**Statutory Authority**

The amendments to the Commission's rules are adopted pursuant to the authorities set forth therein.

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

**Text of Amendments**

■ For reasons set out in the preamble, Title 17, Chapter II, subpart G, of the Code of Federal Regulations is amended as follows:

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

### Subpart G—Plan of Organization and Operation Effective During Emergency Conditions

■ 1. The general authority citation for part 200, subpart G is revised and the subauthority is removed.

The revision reads as follows:

**Authority:** 15 U.S.C. 77s, 78d, 78d–1, 78w, 77sss, 80a–37, 80b–11; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d nt).

■ 2. Section 200.200 is amended by:

■ a. Removing the authority citation following the section; and

■ b. Revising the phrase ''to read'' ''emergency conditions,''.

■ 3. Section 200.201 is revised to read as follows:

**§ 200.201 General provisions.**

(a) For purpose of this subpart, a person shall be considered unavailable or incapacitated in any situation and from any cause that prevents the person from assuming or performing on a timely basis his or her authorized duties, roles, or responsibilities of office, whether from a primary or alternate facility, or any other location.

(b) For purpose of this subpart, emergency conditions shall be deemed to commence upon the occurrence, or the imminent threat of the occurrence, of a natural or man-made disturbance, including, but not limited to, an armed attack against the United States, its territories or possessions, terrorist attack, civil disturbance, fire, pandemic, hurricane, or flood, that results in, or threatens imminently to result in, a substantial disruption of the organization or operations of the Commission. Such conditions shall be deemed to continue until the Commission shall, by notice or older, resume its normal organization and operations, whether at its headquarters in Washington, DC or elsewhere.

■ 4. Section 200.202 is amended by:
■ a. Removing the authority citation following the section; and
■ b. Revising paragraph (b) to read as follows:

**§ 200.202 Offices, and information and submittals.**

* * * * *

(b) During emergency conditions, all formal or informal requests, filings, reports, or other submittals shall be submitted to the Commission as permitted in non-emergency conditions, unless the Chairman or his or her successor acting pursuant to § 200.203(c)(1) of this subpart specifies another means or location for submission of such requests, filings, reports, or other submittals, by a notice that is disseminated through a method (or combination of methods) that is reasonably designed to provide broad distribution of the information to the public.

■ 5. Section 200.203 is amended by:
■ a. Removing the authority citation following the section;
■ b. Revising paragraph (c)(1);
■ c. In the first sentence of paragraph (e), revising the phrase ''in the absence or incapacity of such person during the emergency conditions'' to read ''in the event of the unavailability or incapacity of such person during emergency conditions''; and
■ d. Adding a sentence to the end of paragraph (e).

The revision and addition read as follows:

**§ 200.203 Organization, and delegation of authority.**

* * * * *

(c) * * *

(1) In the event of the unavailability or incapacity of the Chairman of the Commission during emergency conditions, the authority of the Chairman to govern the affairs of the Commission and to act for the Commission, as provided for by law and by delegation from the Commission, will pass to the available person highest on the following list, until such time as the Chairman is no longer unavailable or incapacitated, or a successor Chairman has assumed office pursuant to Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) and Reorganization Plan No. 10 of 1950 (15 FR 3175, 64 Stat. 1265):

(i) The Commissioners in order of seniority.

(ii) The General Counsel.

(iii) The Division Directors in the order designated by the Chairman in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

(iv) The Regional Directors in the order designated by the Chairman in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

(v) The District Administrators in the order designated by the Chairman in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

* * * * *

(e) * * * A person who discharges or assumes the duties of the head of a division or office pursuant to this subsection is hereby delegated, throughout the period of the unavailability or incapacity of the head of the division or office during the emergency conditions, all of the functions that the Commission has delegated to the head of the division or office.

**§ 200.204 [Amended]**

■ 6. Section 200.204 is amended by:
■ a. Removing the authority citation following the section; and
■ b. Revising the phrase ''In the absence of unavailability of the appropriate staff officer or his successor'' to read ''In the event of the unavailability or incapacity of the appropriate staff officer or his or her successor during emergency conditions''.

**§ 200.205 [Amended]**

■ 7. Section 200.205 is amended by removing the authority citation following the section.

Dated: June 5, 2006.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 06–5232 Filed 6–8–06; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Part 57

**RIN 1219–AB29**

## Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Diesel particulate outreach seminars.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) will conduct three outreach seminars to assist metal and nonmetal underground mine operators who use diesel-powered equipment in complying with the diesel particulate matter (DPM) health standards published on May 18, 2006 (71 FR 28924). The seminars will also address requirements for special extensions of time in which to meet the final limit.

**DATES:** The seminars will be held June 27, 2006 in Pittsburgh, Pennsylvania; June 29, 2006 in Louisville, Kentucky; and July 13, 2006 in Reno, Nevada. The seminar in Reno is being held in conjunction with the National Metal and Nonmetal Mine Rescue Contest at the same location as the contest.

**ADDRESSES:** See the location information provided in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939; 202–693–9440 (telephone); or 202–693–9441 (facsimile).

The final rules on Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners are available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

**SUPPLEMENTARY INFORMATION:**

### I. Seminars

The one-day seminars will provide for an exchange of information and will address questions about provisions of the May 18, 2006 final rule regarding the phased-in final limits, new provisions for medical evaluation of miners required to wear respiratory protection, and transfer of miners who are medically unable to wear respirators. The seminars will also address requirements from the June 6, 2005 rule for special extensions of time to meet the DPM final limit (70 FR 32868).

*A. Attendance*

The seminars are open to all interested parties. Metal and nonmetal mine operators, including contractors, who use diesel-powered equipment underground, as well as miners who work at those operations, miners' representatives and diesel powered equipment manufacturers are encouraged to attend the seminars. Registration to attend the seminars is not required.

*B. Conduct of the Seminars*

The seminars will begin each day at 9 a.m. During the morning session, MSHA will answer questions about requirements of the rule including compliance determination, the final PELs, applications for extensions of time in which to meet the final limits, medical evaluation, and transfer provisions. MSHA will give a PowerPoint presentation of the final rule provisions, followed by a question and answer session with the attendees.

The afternoon session will focus on a discussion of control technology. The purpose of the controls session is to provide the mining community with technical information on DPM control technologies that can be used to reduce personal exposures to DPM in underground MNM mines. The PowerPoint presentations will be made available on MSHA's Internet site at *http://www.msha.gov.*

*C. Location of Seminars*

The seminars will be held on the following dates and at the locations indicated:

| Date | Location | Phone |
|---|---|---|
| June 27, 2006 | Pittsburgh Airport Marriott, 777 Aten Road, Coraopolis, PA 15108 | (800) 328–9297 |
| June 29, 2006 | Executive Inn, 978 Phillips Lane, Louisville, KY 40213 | (800) 626–2706 |
| July 13, 2006 | Reno Sparks Convention Center, 4590 S Virginia Street, Reno, NV 89502–6013 | (775) 827–7620 |

The Reno, NV seminar is being held in conjunction with the National Metal and Nonmetal Mine Rescue Contest and is at the same location as the contest.

## II. Background

In January 2001, MSHA promulgated a final rule addressing DPM exposure of underground metal and nonmetal miners (66 FR 5706). The 2001 final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines. The rule established an interim concentration limit of 400 micrograms of total carbon (TC) per cubic meter of air ($400_{TC}$ µg/m$^3$) which became applicable July 20, 2002, and a final concentration limit of 160 micrograms of total carbon per cubic meter of air ($160_{TC}$ µg/m$^3$) to become applicable after January 19, 2006; (amended on September 19, 2005 (70 FR 55019), to become applicable May 20, 2006). Industry challenged the rule and organized labor intervened in the litigation. Settlement negotiations with the litigants have resulted in other regulatory actions on several requirements of the rule. On February 27, 2002 (67 FR 9180), MSHA revised the 2001 final rule to clarify § 57.5060(b)(1) and (b)(2) regarding maintenance and to add a new paragraph (b)(3) to § 57.5067 regarding the transfer of existing equipment between underground mines. MSHA published the 2005 final rule on June 6, 2005, which converted the interim concentration limit measured by TC to a comparable permissible exposure limit (PEL) measured by elemental carbon (EC).

The 2006 final rule phases in the DPM final limit of $160_{TC}$ µg/m$^3$ over a two-year period, based on feasibility. On May 20, 2006, the first phase of the final limit of $308_{EC}$ µg/m$^3$ became effective. On January 20, 2007, the DPM final limit will be reduced to $350_{TC}$ µg/m$^3$. The final limit of $160_{TC}$ µg/m$^3$ will become effective on May 20, 2008. Mine operators must continue to use engineering and administrative controls, supplemented by respiratory protection when needed, to reduce miners' exposures to the prescribed limits. As with the interim DPM limit, MSHA will enforce the final limits as permissible exposure limits (PEL).

This final rule also establishes new requirements for medical evaluation of miners required to wear respiratory protection, and transfer of miners who are medically unable to wear a respirator. It deletes the existing provision that restricts newer mines from applying for an extension of time in which to meet the final limit.

Dated: June 6, 2006.

**Patricia W. Silvey,**

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. E6–9067 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–43–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[EPA–HQ–OAR–2002–0056; FRL–8180–4]**

**RIN 2060–AN50**

## Revision of December 2000 Clean Air Act Section 112(n) Finding Regarding Electric Utility Steam Generating Units; and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration

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

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

**SUMMARY:** This action sets forth EPA's decision after reconsidering certain aspects of the March 29, 2005 final rule entitled ''Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List'' (Section 112(n) Revision Rule). We are also issuing our final decision regarding reconsideration of certain issues in the May 18, 2005 final rule entitled ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units'' (Clean Air Mercury Rule; CAMR).

After considering the petitions for reconsideration and the comments received, we are not revising the final Section 112(n) Revision Rule other than explaining in more detail what we meant by the effectiveness element in the term ''necessary.'' The only two substantive changes we are making to

CAMR in response to comments involve revisions to the State mercury (Hg) allocations, and to the new source performance standards (NSPS). We also are finalizing the regulatory text that clarifies the applicability of CAMR to municipal waste combusters (MWC) and certain industrial boilers. Finally, we are denying the requests for reconsideration with respect to all other issues raised in the petitions for reconsideration submitted for both rules.

**DATES:** *Effective Date:* This final action is effective on June 9, 2006.

**ADDRESSES:** *Docket.* EPA has established a docket for this action including Docket ID No. EPA–HQ–OAR–2002–0056, legacy EDOCKET ID No. OAR–2002–0056, and legacy Docket ID No. A–92–55. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the following address: Air and Radiation Docket and Information Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1744. The Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For general and technical information, contact Mr. William Maxwell, Emission Strategies Group, Sector Policies and Programs Division, Mailcode: D243–01, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5430; fax number: (919) 541–5450; e-mail address: *maxwell.bill@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

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

I. General Information
A. Does this reconsideration action apply to me?
B. How do I obtain a copy of this document and other related information?
C. Is this action subject to judicial review?
II. Background
III. This Action
A. Section 112(n) Revision Rule
B. CAMR
IV. Issues Not Corrected in the CAMR Technical Corrections or in the Reconsideration Documents
V. Statutory and Executive Order (EO) Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Congressional Review Act

## I. General Information

### *A. Does this reconsideration action apply to me?*

Categories and entities potentially affected by this action include:

| Category | NAICS code[1] | Examples of potentially regulated entities |
|---|---|---|
| Industry | 221112 | Fossil fuel-fired electric utility steam generating units. |
| Federal Government | [2] 221122 | Fossil fuel-fired electric utility steam generating units owned by the Federal government. |
| State/local/Tribal Government | [2] 221122 | Fossil fuel-fired electric utility steam generating units owned by municipalities. |
| | 921150 | Fossil fuel-fired electric utility steam generating units in Indian country. |

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists examples of the types of entities EPA is now aware could potentially be affected by this action. Other types of entities not listed could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult Mr. William Maxwell listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### *B. How do I obtain a copy of this document and other related information?*

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

### *C. Is this action subject to judicial review?*

Under section 307(b) of the Clean Air Act (CAA or the Act), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before August 8, 2006. Only those objections to the final action which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

## II. Background

For a brief history of the Section 112(n) Revision Rule rulemaking process that preceded this final action, see our discussion at 70 FR 62200 (October 28, 2005). On March 29, 2005, we issued a final rule (70 FR 15994) that revised the Agency's December 2000 finding made pursuant to CAA section 112(n)(1)(A), and based on that revision, removed coal- and oil-fired electric utility steam generating units (Utility Units or power plants) from the CAA section 112(c) source category list.

Following publication of the March 29, 2005 **Federal Register** rule, the Administrator received two petitions, filed pursuant to section 307(d)(7)(B) of the CAA, requesting reconsideration of

many aspects of the final rule.[1] On October 28, 2005 (70 FR 62200), we granted reconsideration on several issues raised by petitioners (October Reconsideration Notice).[2] At that time, we did not act on any of the remaining issues in those petitions. We are responding to those issues in this action.

The issues on which we granted reconsideration involved several aspects of the final rule, including:

- Legal interpretations;
- EPA's methodology and conclusions concerning why utility Hg emissions remaining after imposition of the requirements of the CAA are not reasonably anticipated to result in hazards to public health;
- Detailed discussion of certain issues related to coal-fired Utility Units as set forth in section VI of the final Section 112(n) Revision Rule; and
- EPA's decision related to nickel (Ni) emissions from oil-fired Utility Units.

We describe these issues at 70 FR 62200. For the reasons indicated in a letter dated June 24, 2005, we denied petitioners request that we administratively stay the Section 112(n) Revision Rule under CAA section 307(d)(7)(B). On August 4, 2005, the D.C. Circuit denied a similar request to stay the Section 112(n) Revision Rule pending the outcome of the litigation challenging the rule.

For a brief history of the CAMR rulemaking process that preceded this final action, see our discussion at 70 FR 62213 (October 28, 2005). On May 18, 2005, we issued a final rule (70 FR 28606) that established standards of performance for emissions of Hg from new and existing, coal-fired electric utility steam generating units (Utility Units or EGU). Following publication of the May 18, 2005 **Federal Register** rule the Administrator received four petitions, filed pursuant to CAA section 307(d)(7)(B), requesting reconsideration of many aspects of the final rule.[3]

On October 28, 2005 (70 FR 62213), we granted reconsideration on seven issues raised by petitioners. At that time, we did not act on any of the remaining issues in those petitions. We are responding to those issues in this action.

The issues on which we granted reconsideration involved seven narrow aspects of the final rule as follows:

- 2010 phase I Statewide Hg emission budgets and the unit-level Hg emission allocations on which those budgets are based;
- Definition of ''designated pollutant'' under 40 CFR 60.21;
- EPA's subcategorization for subbituminous coal-fired units in the context of the new source performance standards (NSPS);
- Statistical analysis used for the NSPS;
- Hg content in coal used to derive the NSPS;
- Definition of covered units as including municipal waste combustors (MWC); and,
- Definition of covered units as including some industrial boilers.

We describe these issues at 70 FR 62213. For the reasons indicated in a letter dated August 19, 2005, we denied petitioners request that we administratively stay CAMR under CAA section 307(d)(7)(B).

On November 17, 2005, we held a public hearing on the issues for which we granted reconsideration under all six petitions. Five individuals gave oral presentations at the hearing. The transcript of their comments is located in Docket EPA–HQ–OAR–2002–0056, which can be accessed on the Internet at *http://www.regulations.gov.*

We provided a public comment period on the reconsideration issues that ended on December 19, 2005. More than 300 written public comments on the reconsideration issues were received (for both the Section 112(n) Revision Rule and CAMR). The individual comment letters can be found in Docket EPA–HQ–OAR–2002–0056.

## III. This Action

We are making available in Docket EPA–HQ–OAR–2002–0056 a document entitled, ''Response to Significant Public Comments Received in Response to: Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List: Reconsideration (70 FR 62200; October 28, 2005) and Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units: Reconsideration (70 FR 62213; October 28, 2005),'' (Final Reconsideration Response to Comment Document, RTC). This document contains (1) a summary of the comments received on the issues for which we granted reconsideration and our responses to these comments, and (2) a summary of issues raised in the petitions for which we are denying reconsideration, and our rationale for denying reconsideration. This document is available on our Web site at *http://www.epa.gov/ttn/atw/utility/utiltoxpg.html* and through the docket at *http://www.regulations.gov.*

### *A. Section 112(n) Revision Rule*

In the final Section 112(n) Revision Rule, EPA revised the regulatory finding that it issued in December 2000 pursuant to section 112(n)(1)(A) of the CAA, and based on that revision, removed coal- and oil-fired electric utility steam generating units (coal- and oil-fired Utility Units) from the CAA section 112(c) source category list.

At this time, we are announcing our final action after reconsideration of several aspects of the Section 112(n) Revision Rule. We are also announcing our final decision on reconsideration of the remaining issues that were raised by the petitioners.

#### 1. Issues for Which We Granted Reconsideration

After carefully considering the petitions and the information that was submitted during the public comment period, we have determined that none of the new information presented leads us to conclude that our original determination as presented in the final Section 112(n) Revision Rule was incorrect. Therefore, we are reaffirming the March 29, 2005 action. A summary of the comments received and our responses to these comments can be found in our Final Reconsideration RTC. A short summary of the final 112(n) decision follows:

a. *Legal Interpretations.* Congress treated Utility Units differently from other major and area sources and provided EPA considerable discretion in determining whether to regulate such

[1] One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin (State petitioners). The other petition was submitted by five environmental groups and four Indian Tribes: The Natural Resources Defense Council (NRDC), the Clean Air Task Force (CATF), the Ohio Environmental Council, the U.S. Public Interest Research Group (USPIRG), the Natural Resources Council of Maine; the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Penobscot Indian Nation, and the Passamaquoddy Tribe of Maine (Indian Township and Pleasant Point) (Environmental petitioners).

[2] In this action, the term ''petitioner'' refers only to those entities that filed petitions for reconsideration.

[3] One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin (State petitioners). The second petition was submitted by five environmental groups: the Natural Resources Defense Council (NRDC), the Clean Air Task Force (CATF), the Ohio Environmental Council, the U.S. Public Interest Research Group (USPIRG), and the Natural Resources Council of Maine. The third petition was submitted by the Jamestown Board of Public Utilities. The fourth petition was submitted by the Integrated Waste Service Association (IWSA).

units under CAA section 112. CAA section 112(n)(1)(A) provides:

> The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

The rationale behind our interpretation of the above language is set forth in the final Section 112(n) Revision Rule, the Reconsideration Notice, and attendant response to comment documents. *See, e.g.,* 70 FR 15997–16002; Final Reconsideration RTC; Section 1.1.1. In those documents we explain how we reasonably interpreted the terms ''appropriate'' and ''necessary,'' as well as why it was reasonable for us to interpret CAA section 112(n)(1)(A) to focus on (1) hazards to public health and (2) hazardous air pollutant (HAP) emissions from Utility Units remaining after imposition of the requirements of the Act when making our appropriate and necessary inquiries. Although in this action we are not reiterating all the reasons our interpretations are reasonable, we note that the comments received during reconsideration did not cause us to change those interpretations.

We are, however, clarifying what we meant when we said that the ''necessary'' inquiry entails an analysis of whether the alternative authorities identified under the Act would ''effectively address'' the remaining HAP emissions from Utility Units. *See* 70 FR 16001. In interpreting the phrase ''necessary'' to incorporate an effectiveness inquiry, we did not intend for such an inquiry to involve a public health-based assessment, or ''health test,'' as some commenters called it. Rather, the sole purpose of including the effectiveness inquiry as part of the ''necessary'' analysis was to ensure that EPA was not precluded from regulating Utility Units under CAA section 112 where another statutory authority identified would do so in a manner that was either not cost-effective or administratively effective in terms of ease of implementation of the program for regulators and the regulated community (even though that statutory authority may address any remaining hazards to public health).

To summarize, there are two aspects of the ''necessary'' inquiry. The first aspect involves a determination as to whether there are any other authorities under the Act that, if implemented, would address any hazards to public health posed by the remaining Utility HAP emissions. The second aspect involves the effectiveness inquiry, which we have now clarified involves an assessment of whether the alternative statutory authority identified can be implemented in a cost-effective and administratively-effective manner.[4]

b. *CMAQ.* EPA received numerous comments regarding its use of the Community Multi-scale Air Quality (CMAQ) modeling system for the Section 112(n) Revision Rule. The Final Reconsideration RTC contains a detailed summary of comments and responses on particular issues raised (*e.g.,* 36 kilometer (km) grid cell, emissions inventory, dry deposition). Below we respond generally to criticisms that it is premature to use CMAQ for this rule, and arguments that recent information from an ongoing receptor modeling study shows that CMAQ underestimates local deposition.

The CMAQ model contains the best science available to EPA to model Hg deposition. All atmospheric modeling analyses include some assumptions and uncertainties that are improved as scientific understanding evolves.

The peer review process was part of this process. The CMAQ peer review process has been the same for Hg, ozone, and fine particulate matter ($PM_{2.5}$).[5] In fact, the latest peer review of CMAQ focused both on $PM_{2.5}$ and Hg. The peer review panel consisted of six to eight experts from academia, industry, and consulting. The panel was charged with review and oversight of all aspects of CMAQ, including emissions pre-processors, meteorological inputs and chemical mechanisms in the model. The peer review panel received documentation and presentations from EPA Office of Research and Development (ORD) scientists on ozone, $PM_{2.5}$, Hg, and other aspects of CMAQ science. The peer review panel was also able to question, in-person, EPA ORD scientists on all aspects of the science contained in CMAQ. After the latest peer review,[6] the panel then prepared a report on the results of their peer review, which is contained on the Community Modeling and Analysis System (CMAS) Web site (*http://www.cmascenter.org*) and in the CAMR docket.[7] In addition the ORD response to this peer review is also found at this location on this Web site. The New York Department of Environmental Conservation findings to-date show CMAQ to be the best performing model for wet deposition at the MDN sites. Importantly, the peer review process did not identify any concerns regarding assumptions used or with uncertainties in the modeling that EPA was not already aware of and considering as it used the model. Thus, although it is true that a portion of the peer review occurred after EPA issued the Section 112(n) Revision Rule and CAMR, even if the peer review had occurred before the rules were final, it would not have resulted in EPA's using CMAQ differently or reaching a different conclusion.

We also received numerous comments citing to an EPA ORD receptor modeling study in Steubenville, Ohio. The Steubenville study can not be directly compared with the model results because, among other things, the Steubenville study included sources other than U.S. power plants and used a different timeframe for its analysis. However, the results of the Steubenville,

[4] We recognize that the final rule may have engendered some confusion as to the two distinct steps of the ''necessary'' inquiry. For example, in the first column of page 16005 of the final rule, we note that regulation under CAA sections 110(a)(2)(D) and 111 ''would effectively address'' utility Hg emissions because the level of utility Hg emissions remaining after CAIR will not result in hazards to public health. This discussion in the preamble mixes the first and second steps of the ''necessary inquiry.'' As explained above, the first inquiry under the ''necessary'' prong is whether there are any alternative authorities in the Act that, *if implemented,* would address the identified hazards to public health associated with the remaining Utility Unit HAP emissions. The second inquiry under the necessary prong involves the effectiveness inquiry and the scope of that inquiry is clarified above.

[5] Because the necessary Hg measurements do not exist, it has not been possible to subject the Hg portion of the model to the kind of evaluation against empirical measurements that the ozone and fine particulate matter portions have received. However, we applied the CMAQ model for CAMR only in a relative sense (the CMAQ estimate of the percent of deposition, not the absolute amount, due to power plants was used as an input into the Mercury Maps model as described in the Effectiveness TSD—thus, empirical validation of absolute values is not as critical to this use of the model.

[6] A December 2003 peer review focused on the total CMAQ platform and specifically on enhancements to the Hg chemical solver, which is responsible for Hg transformation and deposition in CMAQ. A May 2005 peer review included an extended discussion on the CMAQ Hg model science, the specific version of CMAQ used in CAMR, the 2001 model-Mercury Deposition Network (MDN) intercomparison study and the upcoming North American Intercomparison Study.

[7] Community Modeling and Analysis System (CMAS). Final Report: Second Peer Review of the CMAQ Model. July 2005. *http://www.cmascenter.org. See* also EPA–HQ–OAR–2002–0056–6307.

Ohio, receptor modeling study conducted by EPA ORD are consistent, not inconsistent, with those obtained by the CMAQ modeling. The results of this receptor modeling study show that 67 percent of the Hg depositing in precipitation in 2003 at the Steubenville monitor location is from all forms of coal-combustion, with an uncertainty range of ±14 percent. The CMAQ Hg modeling predicts for 2001 that utility coal combustion contributes 44 percent to Hg deposition at the CMAQ 36-km square grid cell containing the Steubenville, Ohio, monitoring site. One grid cell to the north and three grid cells to the east of this monitoring site, the CMAQ model predicts 57 percent and 71 percent, respectively of Hg deposition from utility coal combustion. Thus, because this receptor modeling study provides utility and other coal combustion percentages roughly in the same range as those provided by the CMAQ model for utilities only, it improves confidence in the CMAQ source-attribution results. Furthermore, the CMAQ model predicted wet deposition at the grid cell containing the ORD Steubenville monitoring site of 14.2 micrograms per square meter (μg/$m^2$) for 2001. The measured Hg wet deposition at the Steubenville monitoring site for 2003 is 13.1 μg/$m^2$. At the closest MDN site (PA37) to Steubenville, the 2001 CMAQ predicted and measured Hg wet deposition rates are 9.9 and 9.4 μg/$m^2$. Thus, it appears that CMAQ model is predicting Hg wet deposition values in the Steubenville area with sufficient accuracy for these rules.

We note that the Steubenville study estimates current deposition at a single point.[8] Although these data will be useful for validating air quality models, they are not useful for estimating exposure because deposition over a larger geographic area is needed to estimate the contribution to watersheds, MeHg concentrations in fish, and ultimately human exposure. As explained in the Effectiveness TSD, Section 2, the hydrologic unit code (HUC–8) watershed is the appropriate scale for estimating exposure to Hg. The CMAQ model, not a single point estimate, is used for estimating deposition within the watersheds.

In conclusion, CMAQ was applied using the best available Hg science for the Section 112(n) Revision Rule. Nonetheless, we recognize that, as new Hg scientific information becomes available and accepted by the scientific community, we will incorporate it into future versions of the CMAQ model. Indeed, EPA released an updated version of the CMAQ Hg model on the CMAS Web site in March 2006 which partially addresses the concerns of the peer review. Importantly, even if we were to use of the March 2006 version of CMAQ it would not materially alter the results of our March decision. Future versions of CMAQ will address other aspects of the peer review.

c. *Public Health Analysis.* EPA conducted a thorough and sophisticated public health analysis pursuant to CAA section 112(n)(1)(A). The final Section 112(n) Revision Rule, the Effectiveness TSD, the Reconsideration TSD, and the Final Reconsideration RTC set forth EPA's methodology and analysis supporting its conclusion under CAA section 112(n)(1)(A) that the utility-attributable emissions remaining after imposition of the requirements of the Act are not reasonably anticipated to pose hazards to public health. Specifically, EPA examined in detail the impact of remaining utility Hg emissions on consumers of self-caught freshwater fish because this exposure pathway results in the highest utility-attributable Hg exposure. See 70 FR 16021; Reconsideration TSD at 1. Thus, consumers of self-caught freshwater fish that substitute other sources of fish (*e.g.*, aquaculture, commercial freshwater, or marine) for self-caught freshwater fish in their diet will lower (reduce) their exposure to utility-attributable Hg.

This sophisticated analysis involved our modeling utility Hg deposition following implementation of CAIR and CAMR, and then applying Mercury Maps and actual fish tissue sample data to estimate corresponding changes in methylmercury (MeHg) fish tissue concentrations. We then folded into the analysis fish consumption rates from various sources, including the Exposure Factors Handbook (EFH), the Methylmercury Water Quality Criterion, and a study of Native American subsistence fisher consumption rates. All of this information was compiled in order to compare the exposure to utility-attributable MeHg for a freshwater fisher to the Reference Dose (RfD) for Hg—what we labeled the index of daily intake (IDI). This comparison was done not only at several consumption rates, including the mean recreational freshwater fisher and the 99th percentile Native American subsistence fisher, but also for various levels of utility-attributable MeHg fish tissue concentrations. *See* Effectiveness TSD, Table 6.4; Final Reconsideration RTC, Table 2. An IDI of less than one (1) is equal to a utility-attributable exposure lower than the RfD. *See* 70 FR 16021.

As these IDI tables show, CAIR, and, furthermore, CAMR, reduce the general public's exposure to utility-attributable MeHg due to freshwater fish consumption well below the RfD (*e.g.*, IDI less than 1). In particular, for all consumption rates analyzed, the IDI is below 1 when eating freshwater fish from up to and including the 50th percentile for fish tissue utility-attributable MeHg. When eating solely freshwater fish in the 75th to 95th percentiles for fish tissue utility-attributable MeHg, the only two groups with IDIs above 1 are the 95th and 99th Native American subsistence fishers. Finally, only when eating solely freshwater fish from the 99th percentile for fish tissue utility-attributable MeHg do the 99th percentile recreational fisher and mean Native American subsistence fisher show IDIs above 1. *See* Effectiveness TSD, Table 6.4; Final Reconsideration RTC, Table 2. These results show that the overwhelming majority of the general public and high-end consumers of self-caught freshwater fish are not expected to be exposed to an IDI above 1 (*e.g.*, utility-attributable MeHg exposure would be below the RfD).

Importantly, as discussed in the final Section 112(n) Revision Rule, the likelihood that factors will converge such that a person would both eat at a high consumption rate and eat solely freshwater fish with high utility-attributable MeHg concentrations is small. *See* 70 FR 16024. Notably, this is true for Native American subsistence fishers because deposition and fish tissue maps indicate that the overwhelming majority of tribal populations live outside areas most impacted by utility-attributable Hg deposition and elevated utility-attributable fish tissue levels. *Id.* Moreover, as discussed elsewhere, although the RfD is an appropriate benchmark, an IDI above 1 (*e.g.*, above the RfD) does not necessarily mean that a public health hazard exists.[9] *Id.*

In the Reconsideration TSD, we looked beyond the self-caught freshwater fish exposure pathway. We were able to undertake a similar quantitative IDI analysis only for the marine fish consumption pathway. That analysis, which likely overstates the utility-attributable Hg levels in marine

[8] We note that the location of the sole monitor for the Steubenville study is not designed to be representative of the deposition to the entire watershed. In fact, it is placed on top of a hill and not at a location where fish are caught.

[9] The World Health Organization (WHO), Health Canada, and the Agency for Toxic Substances and Disease Registry (ATSDR) all set higher thresholds for Hg than EPA's RfD, which would in turn lead to lower IDIs. For example, the WHO sets the level at 0.23 g/kg/day; Health Canada sets the level at 0.2 g/kg/day; and ATSDR sets a value of 0.3 g/kg/day.

fish, showed that for the general public eating at both mean and high-end consumption rates the IDIs are well below 1 (*e.g.*, 0.00 to 0.05). *See* Reconsideration TSD, Table 3.2. EPA went further and calculated IDI values for consumption of marine species with high MeHg concentration, yet those IDIs also were below 1, even for a person consuming in the 99.9th percentile consuming exclusively fish with high utility-attributable MeHg concentrations. *Id.,* Table 3.3. Finally, Table 3 of the Final Reconsideration RTC shows that even when higher marine fish consumption rates (for marine fish with average utility-attributable MeHg concentrations) are added to the freshwater consumption rates, the IDI values do not change substantially (*e.g.*, increase ranges from 0.03 to 0.09).[10] Notably, such an increase is highly unlikely because an individual first would need to eat a large amount of marine fish in addition to a given amount of freshwater fish. Even if it were to occur, such an increase would not materially affect the IDI values, which again supports our focus on utility-attributable exposure from freshwater fish consumption.

Although scientific uncertainties and a lack of data made similar quantitative IDI analyses for other pathways (*e.g.*, commercial freshwater, estuarine, and aquaculture) not possible, EPA presented detailed qualitative analyses showing that the contribution from these pathways would be small, and in all cases are bounded by the self-caught freshwater pathway. *See* Reconsideration TSD, Sections 4 through 7. For example, EPA explained how it is the location and type of feed caught to make fish feed, as opposed to the location of the aquaculture farms, that is relevant to assessing the utility-attributable concentration of MeHg in aquaculture fish. *See* 60 FR 62207. Furthermore, many of the commonly consumed aquaculture fish species (*e.g.*, catfish) tend to have lower concentrations of MeHg than many of the commonly consumed marine fish, and the total amount of aquaculture fish consumed in the U.S. is substantially less than the total amount of marine fish consumed in the U.S. Thus, having already concluded that an upper-bound estimate of utility-attributable Hg exposure due to marine fish is small and that the utility-attributable Hg exposure due to aquaculture is smaller than for marine fish, we reasonably concluded that the utility-attributable Hg exposure due to aquaculture fish is minimal. *Id.*

For the estuarine pathway, we discussed how EPA finds that the available data indicate that the utility-attributable exposure to Hg from estuarine fish and shellfish will likely be small relative to that from self-caught freshwater fish. *Id.* We estimated that the total exposure from the entire global Hg pool (*i.e.*, all Hg sources, including, but, not limited to power plants,) associated with consumption of estuarine and nearcoastal fish is roughly one third of the exposure from all marine species. This estimate of total Hg exposure from estuarine species is thought to be an upper bound because it is based on total Hg concentrations in shellfish rather than MeHg concentrations, the Hg species that is toxicologically most significant. *See* Reconsideration TSD, Section 4. Moreover, of the Hg exposure associated with the consumption of estuarine and near-coastal fish, we estimate that the utility-attributable fraction is small.[11]

Finally, for the commercial freshwater fish pathway, we explained how freshwater commercial fish are not a significant exposure pathway because total consumption is small when compared to recreational freshwater fish consumption. *See* Reconsideration TSD, Section 6; 70 FR 62205. Further, even though utility-attributable Hg deposition is comparatively higher around the Great Lakes and the regional watershed surrounding the Great Lakes as defined by the U.S. Geological Survey (USGS), in comparison with the rest of the U.S., it is still only a small percentage of Hg deposition from all sources. Additionally, only a portion of the commercial freshwater harvesting area is affected by comparatively higher concentrations of utility-attributable Hg deposition in $\mu g/m^2$ (*e.g.*, Lakes Michigan, Erie, and Huron), and the Great Lakes utility-attributable Hg deposition is not disproportionately higher than the immediately surrounding areas for recreational freshwater harvest. All of these factors lead us to believe that the commercial freshwater fish exposure pathway is still expected to be small relative to the national recreational freshwater exposure pathway. *See* 70 FR 62206.

After reviewing the comments received during the reconsideration, we are not changing our analyses of these consumption pathways and continue to find that self-caught freshwater fish represent the pathway most impacted by utility Hg emissions.

Finally, in addition to the above IDI analyses, EPA evaluated whether, following CAIR and, furthermore, following CAMR, there would be any utility hotspots, defined as water bodies that are a source of consumable fish with MeHg tissue concentrations attributable solely to utilities greater than the MeHg water quality criterion of 0.3 mg/kg. *See* 70 FR 16026. EPA's analysis showed that after implementation of CAIR and, furthermore, after CAMR we do not believe that there will be any utility hotspots. *See* 70 FR 16027. Nonetheless, as indicated elsewhere, EPA intends to monitor the situation and take action as necessary. *Id.*[12]

In summary, this information supports EPA's conclusion that following CAIR, and, moreover, following CAMR, utility Hg emissions are not reasonably anticipated to result in a hazard to public health. Specifically, the overwhelming majority of the general public and high-end fish consumers are not expected to be exposed above the MeHg RfD (an IDI value greater than 1). Although the possibility exists that a very small group of people may be exposed above the RfD (an IDI value greater than 1), significant uncertainties exist with respect to the existence and actual size of such a group. There are also significant uncertainties concerning the extent to which such exposure might exceed the RfD (an IDI value greater than 1) and whether exposure at such levels would cause adverse effects. Notably, as the U.S. Court of Appeals for the District of Columbia Circuit in *Vinyl Chloride* held, ''safe'' does not mean risk-free. *See* 824 F.2d 1165. *Id.* Rather, EPA must ''determine what inferences should be drawn from available scientific data and

[10] In Section 1.1.1.1.1 of the Final Reconsideration RTC, EPA explained in more detail why it is very likely that its CAA section 112(n)(1)(A) conclusion regarding hazards to public health would remain unchanged even had it applied the health-based prong of the CAA section 112(f) ample margin of safety inquiry. In particular, we discussed how we effectively considered the factors relevant in the benzene analysis (*e.g.*, estimates of individual risk, incidence, numbers of exposed persons within various risk ranges, scientific uncertainties, weight of evidence, as well as potential standards' technical feasibility, cost, and economic impact).

[11] As described in section 4 of the Reconsideration TSD, utility deposition after CAIR, and even more so after CAMR, is small in the coastal areas, especially taking into account estuarine and near-coastal fisheries on the West Coast. Finally, populated coastal regions like the Chesapeake Bay and Baltimore Harbor (*see* Mason and Lawrence, 1999) will receive significant land-based (*e.g.*, point source discharges) Hg inputs from wastewater effluents, municipal waste discharges, and historical Hg contamination that is slowly leaching from the watershed.

[12] The EPA Inspector General recently issued a report suggesting that EPA conduct monitoring to ensure that its hotspots analysis is accurate. *See* EPA Office of Inspector General, ''Monitoring Needed to Assess Impact of EPA's Clean Air Mercury Rule on Potential Hotspots,'' Report No. 2006–P–00025 (May 15, 2006).

decide what risks are acceptable in the world in which we live.'' *Id.*

Given the size of the population, including sensitive subpopulations, that after implementation of CAIR and, furthermore, CAMR, will be below the RfD (an IDI value of less than 1); the uncertainty of the size and the level to which certain groups may be exposed above the RfD (an IDI value greater than 1); the uncertainties that adverse effects will be experienced by such groups even at levels significantly above the MeHg RfD; and the nature of those potential adverse effects (*see* Reconsideration TSD), EPA, in its expert judgment, concludes that utility Hg emissions do not pose hazards to public health, and, therefore, that it is not appropriate to regulate such emissions under CAA section 112.

c. *Alternative Global Pool Analysis.* In the final rule, EPA concluded that the utility-attributable emissions remaining after imposition of the requirements of the Act are not reasonably anticipated to pose hazards to public health. Based on this finding and consistent with its interpretation of the term ''appropriate,'' EPA concluded that it was not appropriate to regulate Utility Units under CAA section 112. EPA's analysis did not end there, however. EPA went further and concluded that even examining the impact of the global Hg pool, as opposed to the impacts associated with utility-attributable emissions only, it is still not appropriate to regulate Utility Units under CAA section 112. *See* 70 FR 16028–29 (setting forth global pool analysis). In this regard, EPA looked at the global Hg pool and the impact of eliminating all domestic Utility Unit Hg emissions, including those that enter the global mix (versus deposit relatively quickly in the U.S. or nearby ocean waters). *See* 70 FR 16028–29; 70 FR 62208–09. EPA's analysis showed that total domestic utility-attributable emissions are ''a very small fraction of overall methylmercury levels.'' *Id.* at 16028. The modeling further showed that even if we were to eliminate (versus merely further reduce) all domestic utility-attributable Hg, ''virtually none of the risks to public health stemming from the global pool'' would be reduced. *See* 70 FR 16029. In the Reconsideration TSD we went further and undertook a bounding exercise of the monetary benefits, based on intelligence quotient (IQ) decrements, which would occur from elimination of utility Hg emissions. In the context of this global pool argument, EPA assumed a hazard to public health existed resulting from global pool emissions, and then properly proceeded with its analysis under the ''appropriate'' prong.

Specifically, in light of its finding that eliminating all domestic utility-attributable Hg would reduce virtually none of the health risks stemming from the global pool, EPA proceeded in the appropriate inquiry by considering the factor of cost. As explained in detail in Section 8 of the Reconsideration TSD, the lower bound cost of regulating under CAA section 112 beyond CAIR *e.g.*, $750 million) exceeds the upper bound estimate of the benefits of such regulation (*e.g.*, $210 million).[13] See 70 FR 62209. This alternative global pool cost/benefit analysis further supports EPA's conclusion that it is not appropriate to regulate Utility Units under CAA section 112.

Numerous commenters questioned EPA's benefits analysis, citing an article by Trasande, *et al.* (2005), a study prepared for the Northeast States for Coordinated Air Use Management (NESCAUM) entitled, '' 'Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-fired Power Plants' '' (February 22, 2005; NESCAUM Report), and a study by Cohen, *et al.* (2005). The Reconsideration TSD and Final Reconsideration RTC contain our detailed response to these studies; however, a summary follows.

As stated in the Reconsideration TSD, EPA's approach to modeling exposure and health benefits of reducing emissions from power plants differs in some important ways from the approach in the NESCAUM Report. EPA believes that some of these differences simply reflect the large amount of uncertainty in the underlying science. Other differences reflect situations where the science and economics are fairly clear and EPA has concerns about the approach taken in the NESCAUM Report. For example, the NESCAUM Report attempted to quantify the marine exposure pathway but used assumptions that are not supported by the literature on marine fate and transport of Hg, likely resulting in an overestimate by an unknown amount. The NESCAUM Report used REMSAD modeling which appears to over-predict Hg deposition from U.S. power plants. Although EPA does not endorse the approach in the NESCAUM Report approach, at best it should be interpreted as producing an upper-bound estimate of the IQ benefits of reducing Hg emissions from power plants for two reasons. First, it does not appear that the NESCAUM Report took into account the timeframe for reduced exposure to MeHg. This omission alone leads to an overestimate of estimated benefits in the NESCAUM Report by at least a factor of two. Second, EPA's integrated analysis of the three major epidemiological studies (*i.e.*, Faroes, Seychelles, New Zealand) produced an estimated relationship between exposure and neurological problems that EPA feels is much more scientifically defensible than the estimated relationship used in the NESCAUM Report, based, in part, on a then unpublished and generally unavailable study (Cohen *et al.*, *see* below).

EPA believes that many of the assumptions made in the Trasande article lead to an extreme overstatement of the benefits of Hg reduction (or cost of Hg exposure). Most importantly, the article as originally published contained an error in the estimate of the linear dose-response curve that overstated the estimates of that model by a factor of 10. EPA's estimates fall within the range of the corrected estimates, even accepting the author's other assumptions. However, EPA believes that there are other assumptions embedded in the Trasande, *et al.*, analysis that overstate the possible benefits from Hg reductions. Examples include assumptions regarding the amount of Hg in the supply of edible fish in the U.S., the estimate of the percent of the U.S. edible fish supply that is imported, the assumption that 60 percent of the Hg content in fish affected by domestic deposition is due to U.S. sources, and assumptions related to the derivation of IQ decrements associated with exposure to Hg, including the study's primary estimate of IQ decrements being based on a logarithmic model, instead of a linear model (as recommended by the National Research Council (NRC)). Finally, in the Final Reconsideration RTC we discuss several reasons why the results from Trasande, *et al.*, are an overestimate of the economic benefits of controlling Hg.

In regard to the Cohen, *et al.*, article, EPA also disagrees with some of the assumptions made. In particular, a key element of the Cohen, *et al.*, methodology was to convert the log regression coefficients from the Faroe Islands study into corresponding linear coefficients. Because the slope of the log regression relationship varies at different levels of exposure, the corresponding linear coefficient can vary based on which portion of the dose-response relationship is chosen (*e.g.*, ranging from $-0.2$ to $-1.0$ IQ points per 1 μg/g increase of Hg in hair).

[13] As explained below, we revised our original estimate of $168 million based on corrections made to the Ryan study.

Although the approach taken by Cohen, *et al.*, is in general a reasonable use of the available data to derive an estimate of the Hg-IQ dose-response relationship, it is evident from the results summarized above that the result is highly sensitive to the assumptions made in converting the log regression coefficients from the Faroe Islands study into linear regression coefficients. The approach taken by EPA and Dr. Ryan was more rigorous than that of Cohen, *et al.*, in a number of respects, but one of the most important differences is that EPA obtained linear regression coefficients directly from the Faroe Islands research team, thus, eliminating the need to make assumptions to convert the log regression coefficients into linear coefficients. If the Cohen, *et al.*, analysis were revised to incorporate the linear coefficients provided by the Faroe Islands researchers to EPA, it is likely that Cohen, *et al.*, would produce a Hg-IQ coefficient very similar to that estimated by Dr. Ryan and used by EPA.

2. Remaining Issues in Petitions for Reconsideration

We deny the petitioners' requests for reconsideration on the remaining issues raised in the petitions because they have failed to meet the standard for reconsideration under CAA section 307(d)(7)(B). Specifically, the petitioners have failed to show: That it was impracticable to raise their objections during the comment period, or that the grounds for their objections arose after the close of the comment period; and/or that their concern is of central relevance to the outcome of the rule. We discuss our reasons for denying reconsideration in the Final Reconsideration RTC, which is available on our Web site at *http://www.epa.gov/ttn/atw/utility/utiltoxpg.html.*

*B. CAMR*

CAMR established standards of performance for Hg for new and existing coal-fired electric utility steam generating units (Utility Units), as defined in CAA section 111. The amendments to CAA section 111 rules create a mechanism by which Hg emissions from new and existing coal-fired Utility Units are capped at specified, nation-wide levels. A first phase cap of 38 tons per year (tpy) becomes effective in 2010, and a second phase cap of 15 tpy becomes effective in 2018. Facilities must demonstrate compliance with the standard by holding one ''allowance'' for each ounce of Hg emitted in any given year. Allowances are readily transferable among all regulated facilities. Such a ''cap-and-trade'' approach to limiting Hg emissions is the most cost-effective way to achieve the reductions in Hg emissions from the power sector.

At this time, we are announcing our final action after reconsideration of the seven CAMR issues described above. We are also announcing our final decision on reconsideration of the remaining issues that were raised by the petitioners.

1. Issues for Which Reconsideration Was Granted

After carefully considering the petitions and the information that was submitted during the public comment period, we have concluded that one clarification and two revisions to CAMR are warranted. First, for the reasons stated in the October Reconsideration Notice and in the Final Reconsideration RTC, we are finalizing regulatory language to make it clearer that CAMR does not apply to MWC and certain industrial boilers (40 CFR 60.24(h)(8) (definition of ''Electric generating unit or EGU''). Specifically, we are providing that CAMR applies to coal-fired boilers and combustion turbines serving, at any time since November 15, 1990, a generator with a nameplate capacity greater than 25 MWe producing electricity for sale and does not apply to cogeneration units meeting certain requirements concerning their electricity sales and to solid waste incineration units combusting municipal waste and subject to certain regulatory requirements. In the October Reconsideration Notice, EPA noted that the Agency would make conforming changes to the applicability provisions in the model trading rule (subpart HHHH, 40 CFR 60.4104) based on the final action EPA takes on the proposed rule as those provisions are intended to be consistent with the definition in 40 CFR 60.24(h). We are, therefore, finalizing revised applicability provisions in 40 CFR 60.4104, which are consistent with the language in revised 40 CFR 60.24(h)(8). (We also noted in the October Reconsideration Notice that we would address the matter of the applicability of units subject to the Industrial Boiler maximum achievable control technology (MACT) standards to units subject to CAMR. We recently proposed language amending 40 CFR part 63, subpart DDDDD, with regard to this matter. *See* 70 FR 62264, 62272; October 31, 2005.) The two changes we are making in response to comments relate to issues raised as a result of our request for comment on: (1) The 2010 phase I Statewide Hg emission budgets and the unit-level Hg emission allocations on which those budgets are based; and, (2) the statistical analysis used for the NSPS. These revisions are discussed further below. A summary of the comments received and our responses to these comments can be found in our Final Reconsideration RTC.

a. *Statewide Hg Allocations.* Several commenters, in response to the issue of the unit-level Hg emission allocations on which the 2010 phase I Statewide Hg emission budget is based, provided data that indicated that EPA had erred in the allocations for the State of Alaska because it had failed to include a coal-fired unit located in the State. EPA has added the heat input values for Healy Unit #1 reported by the commenters, and made the appropriate adjustment to the State of Alaska budget. However, EPA is not making any corrections for the Healy Clean Coal Project as requested by the commenters. EPA calculated State budgets based on historic heat input for all units, not potential or projected heat input.

The original CAMR State budgets and the revised State budgets based on the addition of the Healy Unit #1 heat input data are provided in the Final Reconsideration RTC. Because of the small total adjustment and the digit at which the budgets are rounded, only six other State budgets are affected.

b. *Statistical Analysis for NSPS.* Petitioners expressed considerable concern over EPA's statistical analysis. Further, certain commenters provided additional data in support of a revision to the NSPS emission limits for coal refuse-fired units. EPA did not change its statistical approach but, as noted in the October Reconsideration Notice, we did correct the arithmetic errors. EPA has reviewed its analysis along with the discussions provided by the petitioners and commenters, and reanalyzed the coal refuse NSPS based on the new data and documented the results (*see* Final Reconsideration RTC; revised NSPS memo available in the docket). Based on this reanalysis of the appropriate NSPS emission limits, EPA is finalizing the following NSPS Hg limits for new units:

| | |
|---|---|
| Bituminous coal ..... | $20 \times 10^{-6}$ lb/MWh |
| Subbituminous coal (wet units). | $66 \times 10^{-6}$ lb/MWh |
| Subbituminous coal (dry units). | $97 \times 10^{-6}$ lb/MWh |
| Lignite coal ..... | $175 \times 10^{-6}$ lb/MWh |
| Coal refuse ..... | $16 \times 10^{-6}$ lb/MWh |
| IGCC ..... | $20 \times 10^{-6}$ lb/MWh |

2. Remaining Issues in Petitions for Reconsideration

We deny the petitioners' requests for reconsideration on the remaining issues raised in the petitions, because they have failed to meet the standard for reconsideration under CAA section

307(d)(7)(B). Specifically, the petitioners have failed to show: that it was impracticable to raise their objections during the comment period, or that the grounds for their objections arose after the close of the comment period; and/or that their concern is of central relevance to the outcome of the rule. We discuss our reasons for denying reconsideration in the Final Reconsideration RTC, which is available on our Web site at *http://www.epa.gov/ttn/atw/utility/utiltoxpg.html.*

## IV. Issues Not Corrected in the CAMR Technical Corrections or in the Reconsideration Documents

On August 30, 2005 (70 FR 51266), EPA issued a technical corrections document addressing certain corrections to the May 18, 2005 (70 FR 28606) CAMR. We subsequently found certain other errors in CAMR that need correction. All of these corrections should be non-controversial.

On October 28, 2005 (70 FR 62213), EPA proposed to correct the following errors. First, we were inconsistent in our use of phrase ''new, modified, and reconstructed'' in the applicability provisions of the NSPS portion of CAMR. We proposed to correct this inconsistency by revising the language to indicate that the NSPS applies to units which are constructed, modified, or reconstructed after January 30, 2004. Second, there is an inconsistency between the definitions of ''coal'' and ''coal-fired electric utility steam generating unit.'' In defining ''coal'' we indicate that ''coal'' includes ''petroleum coke'' while in defining ''coal-fired electric utility steam generating unit'' we identify ''petroleum coke'' as an example of a supplemental fuel (*i.e.*, a fuel that is burned with coal). We proposed to correct this inconsistency by removing ''petroleum coke'' from the definition of ''coal'' as we do not think ''petroleum coke'' is properly classified as ''coal.'' (We have subsequently placed ''petroleum coke'' in the definition of ''petroleum''; *see* 70 FR 9877, February 27, 2006.) Third, because of the delay between signature and publication of CAMR, the submittal dates for the individual State Hg allocation plans and the full State plans are not consistent. We proposed to resolve this problem by changing the October 31, 2006 date for submitting Hg allowance allocations to the Administrator specified in 40 CFR 60.24(h)(6)(ii)(C) and 40 CFR 60.4141(a) of the model trading rule to November 17, 2006, consistent with the date for submitting State plans specified in 40 CFR 60.24(h)(2). Finally, we identified additional instances where the section renumbering, noted in the August 30, 2005 document, was not corrected, and we proposed to correct these. We received no comments on these issues as a result of the October 28, 2006 document and, therefore, are finalizing these corrections in this action.

Subsequent to the October 28, 2005 document, we found certain other errors in CAMR. With regard to the inconsistency in our use of the phrase ''new, modified, and reconstructed'' in the applicability provisions of the NSPS portion of CAMR, we missed instances in CAA sections 60.40Da and 60.45Da where this inconsistency was found. We believe that these corrections are non-controversial and we are correcting these in this action.

## V. Statutory and Executive Order (EO) Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

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

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

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

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

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of EO 12866, it has been determined that this final action on reconsideration is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under EO 12866. Changes made in response to OMB suggestions or recommendations are documented in the public record.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. This final action on reconsideration imposes no new information collection requirements on the industry. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR 60.40Da–60.49Da; 40 CFR 60.4100–60.4199) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0567 and EPA ICR number 2137.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final action.

For purposes of assessing the impacts of this final action on reconsideration on small entities, a small entity is defined as: (1) A small business that is identified by the NAICS Code, as defined by the Small Business Administration (SBA); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Categories and entities potentially regulated by the final rule with applicable NAICS codes

are provided in the Supplementary Information section of this action.

According to the SBA size standards for NAICS code 221122 Utilities-Fossil Fuel Electric Power Generation, a firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million MWh.

After considering the economic impacts of this final action on reconsideration on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant impact because the final action on reconsideration imposes no additional regulatory requirements on owners or operators of affected sources.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final action on reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although the final rule projected that in 2020, 2 years into the start of the second phase of the cap-and-trade program, compliance costs to government-owned entities would be approximately $48 million, this final action on reconsideration does not add new requirements that would increase this cost. Thus, this final action on reconsideration is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final action on reconsideration does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, this final action on reconsideration is not subject to UMRA section 203.

*E. Executive Order 13132: Federalism*

EO 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the EO to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final action on reconsideration does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. None of the affected facilities are owned or operated by State governments, and the requirements discussed in this action will not supersede State regulations that are more stringent. Thus, EO 13132 does not apply to this final action on reconsideration.

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

EO 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final action on reconsideration does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in EO 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, EO 13175 does not apply to this final action on reconsideration.

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

EO 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This action is a final action on reconsideration of the final CAMR, which is subject to the EO because it is economically significant as defined by EO 12866, and we believe that the environmental health or safety risk addressed by that action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of that final rule on children. The results of the evaluation are discussed in that final rule (70 FR 28606; May 18, 2005) and are contained in the docket (OAR–2002–0056).

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

This final action on reconsideration is not a ''significant energy action'' as defined in EO 13211 (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we conclude that this final

action on reconsideration is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

As noted in the final rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final rule (70 FR 28647; May 18, 2005). This final action on reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this action.

*J. Congressional Review Act*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the final action on reconsideration and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final action on reconsideration in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final action on reconsideration is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final action on reconsideration will be effective June 9, 2006.

**List of Subjects in 40 CFR Part 60**

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

Dated: May 31, 2006.

**Stephen L. Johnson,**

*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of the Federal Regulations is amended as follows:

## PART 60—[AMENDED]

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

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

## Subpart B—[Amended]

■ 2. Section 60.24 is amended by:

■ a. In paragraph (h)(3) revising the table;

■ b. In paragraph (h)(6)(ii)(C), by revising the words ''October 31, 2006'' to read ''November 17, 2006''; and

■ c. In paragraph (h)(8), revising the definition of ''Electric generating unit or EGU'' to read as follows:

**§ 60.24 Emission standards and compliance schedules.**

* * * * *

(h) * * *

(3) * * *

| State | Annual EGU Hg budget (tons) | |
|---|---|---|
| | 2010–2017 | 2018 and thereafter |
| Alaska | 0.010 | 0.004 |
| Alabama | 1.289 | 0.509 |
| Arkansas | 0.516 | 0.204 |
| Arizona | 0.454 | 0.179 |
| California | 0.041 | 0.016 |
| Colorado | 0.706 | 0.279 |
| Connecticut | 0.053 | 0.021 |
| Delaware | 0.072 | 0.028 |
| Florida | 1.232 | 0.487 |
| Georgia | 1.227 | 0.484 |
| Hawaii | 0.024 | 0.009 |
| Iowa | 0.727 | 0.287 |
| Illinois | 1.594 | 0.629 |
| Indiana | 2.097 | 0.828 |
| Kansas | 0.723 | 0.285 |
| Kentucky | 1.525 | 0.602 |
| Louisiana | 0.601 | 0.237 |
| Massachusetts | 0.172 | 0.068 |
| Maryland | 0.490 | 0.193 |
| Maine | 0.001 | 0.001 |
| Michigan | 1.303 | 0.514 |
| Minnesota | 0.695 | 0.274 |
| Missouri | 1.393 | 0.550 |
| Mississippi | 0.291 | 0.115 |
| Montana | 0.377 | 0.149 |
| Navajo Nation | 0.600 | 0.237 |
| North Carolina | 1.133 | 0.447 |
| North Dakota | 1.564 | 0.617 |
| Nebraska | 0.421 | 0.166 |

| State | Annual EGU Hg budget (tons) | |
|---|---|---|
| | 2010–2017 | 2018 and thereafter |
| New Hampshire | 0.063 | 0.025 |
| New Jersey | 0.153 | 0.060 |
| New Mexico | 0.299 | 0.118 |
| Nevada | 0.285 | 0.112 |
| New York | 0.393 | 0.155 |
| Ohio | 2.056 | 0.812 |
| Oklahoma | 0.721 | 0.285 |
| Oregon | 0.076 | 0.030 |
| Pennsylvania | 1.779 | 0.702 |
| South Carolina | 0.580 | 0.229 |
| South Dakota | 0.072 | 0.029 |
| Tennessee | 0.944 | 0.373 |
| Texas | 4.656 | 1.838 |
| Utah | 0.506 | 0.200 |
| Ute Indian Tribe | 0.060 | 0.024 |
| Virginia | 0.592 | 0.234 |
| Washington | 0.198 | 0.078 |
| Wisconsin | 0.890 | 0.351 |
| West Virginia | 1.394 | 0.550 |
| Wyoming | 0.952 | 0.376 |
| Total | 38.000 | 15.000 |

* * * * *

(8) * * *

*Electric generating unit* or *EGU* means:

(1)(i) Except as provided in paragraphs (2) and (3) of this definition, a stationary, coal-fired boiler or stationary, coal-fired combustion turbine in the State serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric (MWe) producing electricity for sale.

(ii) If a stationary boiler or stationary combustion turbine that, under paragraph (1)(i) of this definition, is not an electric generating unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become an electric generating unit as provided in paragraph (1)(i) of this definition on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(2) A unit that meets the requirements set forth in paragraph (2)(i)(A) of this definition shall not be an electric generating unit:

(i)(A) A unit that is an electric generating unit under paragraph (1)(i) or (ii) of this definition:

(*1*) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(*2*) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt-hours (MWh), whichever is greater, to any utility power distribution system for sale.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (2)(i)(A) of this definition for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an electric generating unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (2)(i)(A)(*2*) of this definition.

(3) A ''solid waste incineration unit'' as defined in Clean Air Act section 129(g)(1) combusting ''municipal waste'' as defined in Clean Air Act section 129(g)(5) shall not be an electric generating unit if it is subject to one of the following rules:

(i) An EPA-approved State plan for implementing subpart Cb of part 60 of this chapter, ''Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed On or Before September 20, 1994'';

(ii) Subpart Eb of part 60 of this chapter, ''Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996'';

(iii) Subpart AAAA of part 60 of this chapter, ''Standards of Performance for Small Municipal Waste Combustors for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001'';

(iv) An EPA-approved State Plan for implementing subpart BBBB of part 60 of this chapter, ''Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999'';

(v) Subpart FFF of part 62 of this chapter, ''Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994; or

(vi) Subpart JJJ of 40 CFR part 62, ''Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999''.

* * * * *

## Subpart Da—[Amended]

■ 3. Section 60.40Da is amended by revising paragraph (a)(2) to read as follows:

**§ 60.40Da Applicability and designation of affected facility.**

(a) * * *

(2) For which construction, modification, or reconstruction is commenced after September 18, 1978.

* * * * *

■ 4. Section 60.41Da is amended by revising the definitions of ''Coal'' and ''Coal-fired electric utility steam generating unit'' and in paragraph (b) of the definition of ''Potential combustion concentration'' by revising ''§ 60.48a(b)'' to read ''§ 60.50Da(b)'' to read as follows:

**§ 60.41Da Definitions.**

* * * * *

*Coal* means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004) $^{\varepsilon 1}$ (incorporated by reference, see § 60.17) and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

*Coal-fired electric utility steam generating unit* means an electric utility steam generating unit that burns coal, coal refuse, or a synthetic gas derived from coal either exclusively, in any combination together, or in any combination with other fuels in any amount.

* * * * *

■ 5. Section 60.45Da is amended by:
■ a. Revising paragraph (a) introductory text;
■ b. Revising paragraph (a)(1);
■ c. Revising paragraphs (a)(2)(i) and (a)(2)(ii);
■ d. Revising paragraph (a)(3);
■ e. Revising paragraph (a)(4); and
■ f. Revising paragraph (b) to read as follows:

**§ 60.45Da Standard for mercury.**

(a) For each coal-fired electric utility steam generating unit other than an integrated gasification combined cycle (IGCC) electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any gases which contain mercury (Hg) emissions in excess of each Hg emissions limit in paragraphs (a)(1) through (5) of this section that applies to you. The Hg emissions limits in paragraphs (a)(1) through (5) of this section are based on a 12-month rolling average using the procedures in § 60.50Da(h).

(1) For each coal-fired electric utility steam generating unit that burns only bituminous coal, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of $20 \times 10^{-6}$ pound per megawatt hour (lb/MWh) or 0.020 lb/gigawatt-hour (GWh) on an output basis. The International System of Units (SI) equivalent is 0.0025 nanograms per joule (ng/J).

(2)* * *

(i) If your unit is located in a county-level geographical area receiving greater than 25 inches per year (in/yr) mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of $66 \times 10^{-6}$ lb/MWh or 0.066 lb/GWh on an output basis. The SI equivalent is 0.0083 ng/J.

(ii) If your unit is located in a county-level geographical area receiving less than or equal to 25 in/yr mean annual precipitation, based on the most recent publicly available U.S. Department of Agriculture 30-year data, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of $97 \times 10^{-6}$ lb/MWh or 0.097 lb/GWh on an output basis. The SI equivalent is 0.0122 ng/J.

(3) For each coal-fired electric utility steam generating unit that burns only lignite, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of $175 \times 10^{-6}$ lb/MWh or 0.175 lb/GWh on an output basis. The SI equivalent is 0.0221 ng/J.

(4) For each coal-burning electric utility steam generating unit that burns only coal refuse, you must not discharge into the atmosphere any gases from a new affected source which contain Hg in excess of $16 \times 10^{-6}$ lb/MWh or 0.016 lb/GWh on an output basis. The SI equivalent is 0.0020 ng/J.

* * * * *

(b) For each IGCC electric utility steam generating unit, on and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, modification, or reconstruction commenced after January 30, 2004, any gases which contain Hg emissions in excess of $20 \times 10^{-6}$ lb/MWh or 0.020 lb/GWh on an output basis. The SI equivalent is 0.0025 ng/J. This Hg emissions limit is based on a 12-month rolling average using the procedures in § 60.50Da(g).

■ 6. Section 60.48Da is amended:
■ a. In paragraph (j) introductory text by revising ''§ 60.44a(a)'' to read ''§ 60.44Da(a)'';
■ b. Revising paragraph (l) to read as follows:

**§ 60.48Da Compliance provisions.**

* * * * *

(l) Compliance provisions for sources subject to § 60.45Da. The owner or operator of an affected facility subject to § 60.45Da (new sources constructed, modified, or reconstructed after January 30, 2004) shall calculate the Hg emission rate (lb/MWh) for each calendar month of the year, using hourly Hg concentrations measured according to the provisions of § 60.49Da(p) in conjunction with hourly stack gas volumetric flow rates measured according to the provisions of § 60.49Da(l) or (m), and hourly gross electrical outputs, determined according to the provisions in § 60.49Da(k). Compliance with the applicable standard under § 60.45Da is determined on a 12-month rolling average basis.

* * * * *

**§ 60.50Da [Amended]**

■ 7–8. Section 60.50Da is amended by:
■ a. In paragraph (e)(2) by revising ''§ 60.48(d)(1)'' to read ''§ 60.46(d)(1)''; and
■ b. In paragraph (g) introductory text, by removing the words ''and 60.46Da''.

**Subpart Db—[Amended]**

**§ 60.40b [Amended]**

■ 9. Section 60.40b is amended in paragraph (e) by revising ''§ 60.40a'' to read ''§ 60.40Da''.

**Subpart HHHH—Amended]**

■ 10. Section 60.4104 is revised to read as follows:

**§ 60.4104 Applicability.**

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of this subpart and subparts BB through HH of this part: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the

later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a Hg Budget unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a Hg Budget unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraphs (b)(1)(i) or (b)(2) of this section shall not be Hg Budget units:

(1)(i) Any unit that is a Hg Budget unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become an Hg Budget unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2) Any unit that is an Hg Budget unit under paragraph (a)(1) or (2) of this section, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of:

(i) A State Plan approved by the Administrator in accordance with subpart Cb of part 60 of this chapter (emissions guidelines and compliance times for certain large municipal waste combustors);

(ii) Subpart Eb of part 60 of this chapter (standards of performance for certain large municipal waste combusters);

(iii) Subpart AAAA of part 60 of this chapter (standards of performance for certain small municipal waste combustors);

(iv) A State Plan approved by the Administrator in accordance with subpart BBBB of part 60 of this chapter (emission guidelines and compliance times for certain small municipal waste combustion units);

(v) Subpart FFF, of part 62 of this chapter (Federal Plan requirements for certain large municipal waste combustors); or

(vi) Subpart JJJ of part 62 of this chapter (Federal Plan requirements for certain small municipal waste combustion units).

■ 11. Section 60.4140 is revised to read as follows:

**§ 60.4140 State trading budgets.**

The State trading budgets for annual allocations of Hg allowances for the control periods in 2010 through 2017 and in 2018 and thereafter are respectively as follows:

| State | Annual EGU Hg budget (tons) | |
|---|---|---|
| | 2010–2017 | 2018 and thereafter |
| Alaska | 0.010 | 0.004 |
| Alabama | 1.289 | 0.509 |
| Arkansas | 0.516 | 0.204 |
| Arizona | 0.454 | 0.179 |
| California | 0.041 | 0.016 |
| Colorado | 0.706 | 0.279 |
| Connecticut | 0.053 | 0.021 |
| Delaware | 0.072 | 0.028 |
| Florida | 1.232 | 0.487 |
| Georgia | 1.227 | 0.484 |
| Hawaii | 0.024 | 0.009 |
| Iowa | 0.727 | 0.287 |
| Illinois | 1.594 | 0.629 |
| Indiana | 2.097 | 0.828 |
| Kansas | 0.723 | 0.285 |
| Kentucky | 1.525 | 0.602 |
| Louisiana | 0.601 | 0.237 |
| Massachusetts | 0.172 | 0.068 |
| Maryland | 0.490 | 0.193 |
| Maine | 0.001 | 0.001 |
| Michigan | 1.303 | 0.514 |
| Minnesota | 0.695 | 0.274 |
| Missouri | 1.393 | 0.550 |
| Mississippi | 0.291 | 0.115 |
| Montana | 0.377 | 0.149 |
| Navajo Nation | 0.600 | 0.237 |
| North Carolina | 1.133 | 0.447 |
| North Dakota | 1.564 | 0.617 |
| Nebraska | 0.421 | 0.166 |
| New Hampshire | 0.063 | 0.025 |
| New Jersey | 0.153 | 0.060 |
| New Mexico | 0.299 | 0.118 |
| Nevada | 0.285 | 0.112 |

| State | Annual EGU Hg budget (tons) | |
|---|---|---|
| | 2010–2017 | 2018 and thereafter |
| New York | 0.393 | 0.155 |
| Ohio | 2.056 | 0.812 |
| Oklahoma | 0.721 | 0.285 |
| Oregon | 0.076 | 0.030 |
| Pennsylvania | 1.779 | 0.702 |
| South Carolina | 0.580 | 0.229 |
| South Dakota | 0.072 | 0.029 |
| Tennessee | 0.944 | 0.373 |
| Texas | 4.656 | 1.838 |
| Utah | 0.506 | 0.200 |
| Ute Indian Tribe | 0.060 | 0.024 |
| Virginia | 0.592 | 0.234 |
| Washington | 0.198 | 0.078 |
| Wisconsin | 0.890 | 0.351 |
| West Virginia | 1.394 | 0.550 |
| Wyoming | 0.952 | 0.376 |
| Total | 38.000 | 15.000 |

■ 11. Section 60.4141 is amended by revising paragraph (a) to read as follows:

**§ 60.4141 Timing requirements for Hg allowance allocations.**

(a) By November 17, 2006, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with § 60.4142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

* * * * *

[FR Doc. 06–5173 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

## Pipeline and Hazardous Materials Safety Administration

## 49 CFR Parts 192, 193, and 195

**[Docket No. PHMSA–05–21253; Amdt. Nos. 192–103, 193–19, and 195–86]**

**RIN 2137–AD68**

## Pipeline Safety: Update of Regulatory References to Technical Standards

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

**DATES:** This final rule takes effect on July 10, 2006. The incorporation by reference of publications listed in the rule is approved by the Director of the Federal Register as of July 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Richard D. Huriaux, Director, Technical Standards at (202) 366–4565, by fax at (202) 366–4566, or by e-mail at *richard.huriaux@dot.gov.* Copies of this document or other material in the docket can be reviewed by accessing the Docket Management System's home page at *http://dms.dot.gov.* General information on the pipeline safety program is available at PHMSA's Web site at *http://ops.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards in lieu of government-written standards whenever possible. Voluntary consensus standards are standards developed or adopted by voluntary bodies that develop, establish, or coordinate technical standards using agreed upon procedures.

PHMSA participates in more than 25 national voluntary consensus standards committees. PHMSA's policy is to adopt voluntary consensus standards when they are applicable to pipeline design, construction, maintenance, inspection, and repair. In recent years, PHMSA has adopted dozens of new and revised voluntary consensus standards into its gas pipeline (49 CFR part 192), hazardous liquid pipeline (49 CFR part 195), and liquefied natural gas (LNG) (49 CFR part 193) regulations.

Parts 192, 193, and 195 incorporate by reference all or parts of more than 60 standards and specifications developed and published by technical organizations, including the American Petroleum Institute, American Gas Association, American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, National Fire Protection Association, Plastics Pipe Institute, and Pipeline Research Council International. These organizations update and revise their published standards every 3 to 5 years, to reflect modern technology and best technical practices. PHMSA has reviewed the revised voluntary consensus standards to be incorporated in whole or in part in 49 CFR parts 192, 193, and 195.

This final rule updates the Federal pipeline safety regulations to incorporate by reference all or parts of recent editions of the voluntary consensus technical standards that are currently referenced in the Federal pipeline safety regulations. It updates 38 standards in 49 CFR part 192, *Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,* 49 CFR part 193, *Liquefied Natural Gas Facilities: Federal Safety Standards,* and 49 CFR part 195, *Transportation of Hazardous Liquids by Pipeline.* This update enables pipeline operators to use current technology, materials, and practices. The incorporation of the most recent editions of standards improves clarity, consistency, and accuracy, and reduces unnecessary burdens on the regulated community.

Previous updates of the regulations to incorporate revised standards were issued on May 24, 1996 (61 FR 26121), June 6, 1996 (61 FR 2877), February 17, 1998 (63 FR 7721), and June 14, 2004

(69 FR 32886). PHMSA intends to issue periodic updates of referenced standards to ensure that the pipeline safety regulations reflect current practices and to improve compliance by the pipeline industry with safety standards.

**II. Notice of Proposed Rulemaking**

On July 18, 2005, PHMSA published a Notice of Proposed Rulemaking (NPRM) to incorporate by reference 39 new and/or reaffirmed editions of standards into the Federal pipeline safety regulations. All but one of the new editions is incorporated by reference in this final rule.

PHMSA has chosen not to update the regulatory references found in the 2004 edition of the American Society for Testing and Materials' (ASTM) D2513, *Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings.* We believe that a number of important issues need to be fully addressed by the ASTM Committee F–17 before we adopt any new editions of ASTM D2513. Among these are the issues of rework, regrind, marking, increase in design factor, and requirements for new materials. The gas pipeline safety regulations therefore continue to reference standards found in ASTM D2513 (1999 edition) and ASTM D2517 (2000 edition) for plastic pipe and fittings.

This final rule accepts the following new editions of currently referenced standards for incorporation by reference (IBR) in parts 192, 193, and 195. The list is organized by the standards developing organization responsible for the standard and shows each section of the regulations referencing the standard.

American Gas Association (AGA):

- Purging Principles and Practices (3rd edition, 2001)
  Replaces current IBR: 1975 edition
  Referenced by 49 CFR 193.2513; 193.2517; 193.2615

American Petroleum Institute (API):

- API Specification 5L ''Specification for Line Pipe'' (43rd edition and errata, 2004)
  Replaces current IBR: 42nd edition, 2000
  Referenced by 49 CFR 192.55(e); 192.113; Item I, Appendix B to part 192; 195.106(b)(1)(i); 195.106(e)
- API Specification 5L1 ''Recommended Practice for Railroad Transportation of Line Pipe'' (6th edition, 2002)
  Replaces current IBR: 4th edition, 1990
  Referenced by 49 CFR 192.65(a)
- API Specification 6D ''Pipeline Valves'' (22nd edition, January 2002)
  Replaces current IBR: 21st edition, 1994
  Referenced by 49 CFR 192.145(a); 195.116(d)
- API 620 ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (10th edition, 2002 including Addendum 1)
  Replaces current IBR: 9th edition, 1996
  Referenced by 49 CFR 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b)
- API 1130 ''Computational Pipeline Monitoring for Liquid Pipelines'' (2nd edition, 2002)
  Replaces current IBR: 1st edition, 1995
  Referenced by 49 CFR 195.134; 195.444
- API 2000 ''Venting Atmospheric and Low-Pressure Storage Tanks'' (5th edition, April 1998)
  Replaces current IBR: 4th edition, 1992
  Referenced by 49 CFR 195.264(e)(2); 195.264(e)(3)
- API 2510 ''Design and Construction of LPG Installations'' (8th edition, 2001)
  Replaces current IBR: 7th edition, 1995
  Referenced by 49 CFR 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e); 195.428(c); 195.432(c)

American Society of Civil Engineers (ASCE):

- SEI/ASCE 7–02 ''Minimum Design Loads for Buildings and Other Structures'' (2002 edition)
  Replaces current IBR: 1995 edition
  Referenced by 49 CFR 193.2067

American Society for Testing and Materials (ASTM):

- ASTM A53/A53M–04a (2004) ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless''
  Replaces current IBR: 1999 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)
- ASTM A106/A106M–04b (2004) ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service''
  Replaces current IBR: 1999 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)
- ASTM A333/A333M–05 (2005) ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''
  Replaces current IBR: 1999 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)
- ASTM A372/A372M–03 (2003) ''Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels''
  Replaces current IBR: 1999 edition
  Referenced by 49 CFR 192.177(b)(1)
- ASTM A381–96 (Reapproved 2001) ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems''
  Replaces current IBR: 1996 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)
- ASTM A671–04 (2004) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''
  Replaces current IBR: 1996 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)
- ASTM A672–96 (Reapproved 2001) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures''
  Replaces current IBR: 1996 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)
- ASTM A691–98 (Reapproved 2002) ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures''
  Replaces current IBR: 1998 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)
- ASTM D638–03 ''Standard Test Method for Tensile Properties of Plastics''
  Replaces current IBR: 1999 edition
  Referenced by 49 CFR 192.283(a)(3); 192.283(b)(1)

ASME International (ASME):

- ASME B16.5–2003 (October 2004) ''Pipe Flanges and Flanged Fittings''
  Replaces current IBR: 1996 edition
  Referenced by 49 CFR 192.147(a); 192.279
- ASME B31G–1991 (Reaffirmed; 2004) ''Manual for Determining the Remaining Strength of Corroded Pipelines''
  Replaces current IBR: 1991 edition
  Referenced by 49 CFR 192.485(c); 192.933(a); 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D)
- ASME B16.9–2003 (February 2004) ''Factory-Made Wrought Steel Butt Welding Fittings''
  Replaces current IBR: 1993 edition
  Referenced by 49 CFR 195.118(a)
- ASME B31.4–2002 (October 2002) ''Pipeline Transportation Systems for

Liquid Hydrocarbons and Other Liquids''
Replaces current IBR: 1998 edition
Referenced by 49 CFR 195.452(h)(4)(i)

- ASME B31.8–2003 (February 2004) ''Gas Transmission and Distribution Piping Systems''
  Replaces current IBR: 1995 edition
  Referenced by 49 CFR 192.619(a)(1)(i); 195.5(a)(1)(i); 195.406(a)(1)(i)
- ASME B31.8S–2004 ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines''
  Replaces current IBR: 2002 edition
  Referenced by 49 CFR 192.903(c); 192.907(b); 192.911 Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a)
- ASME Boiler and Pressure Vessel Code, Section I, ''Rules for Construction of Power Boilers'' (2004 edition, including addenda through July 1, 2005)
  Replaces current IBR: 1998 edition
  Referenced by 49 CFR 192.153(a)
- ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels'' (2004 edition, including addenda through July 1, 2005)
  Replaces current IBR: 1998 edition as referenced in § 193.2321; 2001 edition for all other references
  Referenced by 49 CFR 192.153(a); 192.153(b); 192.153(d); 192.165(b)(3); 193.2321; 195.124; 195.307(e)
- ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels—Alternative Rules'' (2004 edition, including addenda through July 1, 2005)
  Replaces current IBR: 1998 edition as referenced in § 193.2321; 2001 edition for all other references
  Referenced by 49 CFR 192.153(b); 192.165(b)(3); 193.2321; 195.307(e)
- ASME Boiler and Pressure Vessel Code, Section IX, ''Welding and Brazing Qualifications'' (2004 edition, including addenda through July 1, 2005)
  Replaces current IBR: 2001 edition
  Referenced by 49 CFR 192.227(a); Item II, Appendix B to part 192; 195.222

Gas Technology Institute (GTI):

- GTI–04/0049 (April 2004) ''LNG Vapor Dispersion Prediction with the DEGADIS 2.1 Dense Gas Dispersion Model for LNG Vapor Dispersion''
  Replaces current IBR: April 1988–July 1990 edition
  Referenced by 49 CFR 193.2059

Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):

- MSS SP–75–2004 ''Specification for High Test Wrought Butt Welding Fittings''
  Replaces current IBR: 1993
  Referenced by 49 CFR 195.118(a)
- MSS SP–44–1996 (Reaffirmed; 2001) ''Steel Pipe Line Flanges''
  Replaces current IBR: 1996
  Referenced by 49 CFR 192.147(a)

NACE International (NACE):

- NACE Standard RP0169–2002 ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems''
  Replaces current IBR: 1996
  Referenced by 49 CFR 195.571; 195.573

National Fire Protection Association (NFPA):

- NFPA 30 (2003) ''Flammable and Combustible Liquids Code''
  Replaces current IBR: 1996
  Referenced by 49 CFR 192.735(b); 195.264(b)(1)
- NFPA 58 (2004) ''Liquefied Petroleum Gas Code (LP-Gas Code)''
  Replaces current IBR: 1998
  Referenced by 49 CFR 192.11(a); 192.11(b); 192.11(c)
- NFPA 59 (2004) ''Utility LP-Gas Plant Code''
  Replaces current IBR: 1998
  Referenced by 49 CFR 192.11(a); 192.11(b); 192.11(c)
- NFPA 70 (2005) ''National Electrical Code''
  Replaces current IBR: 1996
  Referenced by 49 CFR 192.163(e); 192.189(c)

Plastics Pipe Institute, Inc. (PPI):

- PPI TR–3/2004 (2004) ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe''
  Replaces current IBR: 2000
  Referenced by 49 CFR 192.121

**III. Comments on Proposed Rule**

PHMSA received only two comments in response to the proposed rule. First, the Pipeline Standards-Developing Organizations Coordinating Committee (PSDOCC) suggested that the most current addenda be included for selected API tank standards as follows:

- API Standard 620—include Addendum 1
- API Standard 650—include Addenda 1–3
- API Standard 653—include Addendum 1

These addenda are an integral part of the new editions of each standard. Therefore, we will accept this suggestion and will explicitly cite the addenda in the regulation.

Secondly, comments by the National Fire Protection Association (NFPA) are fully supportive of the incorporation by reference of the proposed standards. They suggest only minor changes when citing the National Electric Code (NEC). We agree and will cite the NEC as NFPA 70 (2005) in this final rule.

**IV. Advisory Committee Recommendations**

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) at their December 14, 2005 meeting considered a July 18, 2005 proposal to update regulatory references to technical standards.

The TPSSC and THLPSSC have been established by statute to evaluate proposed pipeline safety regulations. Each committee has an authorized membership of 15 individuals with membership evenly divided between the government, industry, and the public. Each member of these committees is qualified to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety regulations.

The proposal was unanimously accepted by all members of the THLPSSC. The comments of the TPSSC supported the proposal and generally were consistent with written comments filed by other commenters discussed above.

**V. Editorial Changes**

- The definition at § 192.121 on the strength (''S'') of plastic pipe is updated to include the current reference to part D.2. of PPI TR–3/2004 instead of part E of TR–3/2000.
- The reference at § 192.619(a)(1)(i) to section N5.0 of Appendix N of ASME B31.8 is updated to refer to section N5.

• The phrase, ''HIGH CONSEQUENCE AREAS'', that appears after § 192.755 is deleted. This phrase was a typographical error.

• The title to subpart O of part 192 is changed to read, ''Gas Transmission Pipeline Integrity Management''. This new title accurately reflects that the subpart applies only to gas transmission pipelines.

• The standards reference for wind load data in § 193.2067(b)(1) or LNG containers with less than 70,000 gallons is updated to refer to ASCE/SEI 7–02, the current designation, rather than to ASCE 7.

• The standards reference for valve shell and seat testing in § 195.116(d) is corrected to refer to section 10 of API Specification 6D, the current designation, rather than to section 5.

• The NPRM proposed to incorporate by reference NFPA 30 (2003), the new edition of the *Flammable and Combustible Liquids Code.* The section numbering in the 2003 edition differs from that in the 1996 edition. This requires updates to the section references in the hazardous liquid pipeline safety regulations. Therefore, § 195.264(b)(1)(i) should cite section 4.3.2.3.2 of NFPA 30 (2003) instead of section 2–3.4.3 of NPFA 30 (1996). Similarly, § 195.264(b)(1)(ii) should cite section 4.3.2.3.1 of NFPA 30 (2003) instead of section 2–3.4.2 of NFPA 30 (1996). We have made these editorial changes in the final rule.

• The NPRM proposed to incorporate by reference API Standard 2510 (2001), the new edition of the standard for *Design and Construction of LPG Installations.* The section numbering in the 2001 edition differs from that in the 1995 edition. This requires corrections to the section references in the hazardous liquid pipeline safety regulations. Therefore, § 195.264(b)(2) should cite sections 5 and 11 in API Standard 2510 (2001) instead of sections 3 and 9 and § 195.264(e)(4) should cite sections 7 and 11 instead of sections 5 and 9. We have made these editorial changes in the final rule.

• The NPRM proposed to incorporate by reference API 620 (2002), the new edition of the standard for *Design and Construction of Large, Welded, Low-Pressure Storage Tanks.* The section numbering in the 2002 edition differs from that in the previous edition. This requires updates to the section references in the hazardous liquid pipeline safety regulations. Therefore, § 195.264(e)(3) should cite section 9 of API 620 instead of section 7. Similarly, § 195.307(b) should cite section 7.18 instead of section 5.18. We have made these editorial changes in the final rule.

• The NPRM proposed to incorporate by reference NACE Standard RP–0169 (2002), the new edition of the standard for *Control of External Corrosion on Underground or Submerged Metallic Piping Systems.* The current text of §§ 195.571 and 195.573(a)(2) refers to NACE Standard RP0169–96. We have corrected these citations to the correct form, which is ''NACE Standard RP–0169.''

## VI. Rulemaking Analyses

*Privacy Act*

Anyone is able to search the electronic database for all comments and documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit the online Docket Management System at: *http://dms.dot.gov.*

*Executive Order 12866*

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget (OMB). This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

*Executive Order 13132*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not:

(1) Have substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government;

(2) Impose substantial direct compliance costs on state and local governments; or

(3) Preempt state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*Executive Order 13084*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, Consultation and Coordination with Indian Tribal Governments. Because this rule will not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

*Executive Order 13211*

PHMSA has determined this final rule is not a ''significant energy action'' under Executive Order 13211. It also is not a significant regulatory action under Executive Order 12866 and is not likely to have significant adverse effect on the supply, distribution, or use of energy. Further, this final rule has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

*Regulatory Flexibility Act*

This final rule will not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Rather, the final rule only incorporates the most recent editions of voluntary consensus standards that represent the current best practice in pipeline technology. Incorporating the most recent editions of these standards does not impose additional costs on small or large gas pipelines, hazardous liquid pipelines, or liquefied natural gas companies, and may reduce costs by contributing to even safer pipeline operations. Based on the facts available about the expected impact of this rulemaking, I certify, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking will not have a significant economic impact on a substantial number of small entities.

*National Environmental Policy Act*

We have analyzed the final rule changes for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the adoption of the latest standards moves pipeline construction, operations, and maintenance toward current best practices, we have determined that the changes will not significantly affect the quality of the human environment.

*Paperwork Reduction Act*

This final rule does not impose any new or revised information collection requirements.

*Unfunded Mandates Reform Act of 1995*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

**List of Subjects**

*49 CFR Part 192*

Incorporation by reference, Natural gas, Pipeline safety.

*49 CFR Part 193*

Incorporation by reference, Liquefied natural gas, Pipeline safety.

*49 CFR Part 195*

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

■ In consideration of the foregoing, PHMSA amends 49 CFR parts 192, 193, and 195 as follows:

## PART 192—[AMENDED]

■ 1. The authority citation for part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. In part 192, revise ''(ibr, *see* § 192.7)'' to read ''(incorporated by reference, *see* § 192.7)'' wherever it appears.

**§ 192.7 [Amended]**

■ 3. Paragraph (c) of § 192.7 is revised to read as follows:

* * * * *

(c) The full titles of documents incorporated by reference, in whole or in part, are provided herein. The numbers in parentheses indicate applicable editions. For each incorporated document, citations of all affected sections are provided. Earlier editions of currently listed documents or editions of documents listed in previous editions of 49 CFR part 192 may be used for materials and components designed, manufactured, or installed in accordance with these earlier documents at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR part 192 for a listing of the earlier listed editions or documents.

(1) *Incorporated by reference (IBR). List of Organizations and Addresses:*

A. Pipeline Research Council International, Inc. (PRCI), c/o Technical Toolboxes, 3801 Kirby Drive, Suite 520, Houston, TX 77098.

B. American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

C. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

D. ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NE., Vienna, VA 22180.

F. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

G. Plastics Pipe Institute, Inc. (PPI), 1825 Connecticut Avenue, NW., Suite 680, Washington, DC 20009.

H. NACE International (NACE), 1440 South Creek Drive, Houston, TX 77084.

I. Gas Technology Institute (GTI), 1700 South Mount Prospect Road, Des Plaines, IL 60018.

(2) *Documents incorporated by reference.*

| Source and name of referenced material | 49 CFR reference |
|---|---|
| A. Pipeline Research Council International (PRCI): | |
| (1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989). The RSTRENG program may be used for calculating remaining strength. | §§ 192.933(a); 192.485(c). |
| B. American Petroleum Institute (API): | |
| (1) API Specification 5L ''Specification for Line Pipe,'' (43rd edition and errata, 2004) | §§ 192.55(e); 192.113; Item I of Appendix B. |
| (2) API Recommended Practice 5L1 ''Recommended Practice for Railroad Transportation of Line Pipe,'' (6th edition, 2002). | § 192.65(a). |
| (3) API Specification 6D ''Pipeline Valves,'' (22nd edition, January 2002) | § 192.145(a). |
| (4) API 1104 ''Welding of Pipelines and Related Facilities,'' (19th edition, 1999 including Errata October 31, 2001). | §§ 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B. |
| (5) API Recommended Practice 1162 ''Public Awareness Programs for Pipeline Operators,'' (1st edition, December 2003). | §§ 192.616(a); 192.616(b); 192.616(c). |
| C. American Society for Testing and Materials (ASTM): | |
| (1) ASTM A53/A53M–04a (2004) ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.''. | §§ 192.113; Item I, Appendix B. |
| (2) ASTM A106/A106M–04b (2004) ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service.''. | §§ 192.113; Item I, Appendix B. |
| (3) ASTM A333/A333M–05 (2005) ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service.''. | §§ 192.113; Item I, Appendix B. |
| (4) ASTM A372/A372M–03 (2003) ''Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels.''. | § 192.177(b)(1). |
| (5) ASTM A381–96 (Reapproved 2001) ''Standard Specification for Metal-Arc Welded Steel Pipe for Use With High-Pressure Transmission Systems.''. | §§ 192.113; Item I, Appendix B. |
| (6) ASTM A671–04 (2004) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures.''. | §§ 192.113; Item I, Appendix B. |
| (7) ASTM A672–96 (Reapproved 2001) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures.''. | §§ 192.113; Item I, Appendix B. |
| (8) ASTM A691–98 (Reapproved 2002) ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures.''. | §§ 192.113; Item I, Appendix B. |
| (9) ASTM D638–03 ''Standard Test Method for Tensile Properties of Plastics.'' | §§ 192.283(a)(3); 192.283(b)(1). |
| (10) ASTM D2513–87 ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings.''. | § 192.63(a)(1). |
| (11) ASTM D2513–99 ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings.''. | §§ 192.191(b); 192.281(b)(2); 192.283(a)(1)(i); Item 1, Appendix B. |
| (12) ASTM D2517–00 ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings.''. | §§ 192.191(a); 192.281(d)(1); 192.283(a)(1)(ii); Item I, Appendix B. |
| (13) ASTM F1055–1998 ''Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controller Polyethylene Pipe and Tubing.''. | § 192.283(a)(1)(iii). |
| D. ASME International (ASME): | |
| (1) ASME B16.1–1998 ''Cast Iron Pipe Flanges and Flanged Fittings.'' | § 192.147(c). |

| Source and name of referenced material | 49 CFR reference |
|---|---|
| (2) ASME B16.5–2003 (October 2004) ''Pipe Flanges and Flanged Fittings.'' | §§ 192.147(a); 192.279. |
| (3) ASME B31G–1991 (Reaffirmed; 2004) ''Manual for Determining the Remaining Strength of Corroded Pipelines.''. | §§ 192.485(c); 192.933(a). |
| (4) ASME B31.8–2003 (February 2004) ''Gas Transmission and Distribution Piping Systems.''. | § 192.619(a)(1)(i). |
| (5) ASME B31.8S–2004 ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines.''. | §§ 192.903(c); 192.907(b); 192.911, Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 102.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a). |
| (6) ASME Boiler and Pressure Vessel Code, Section I, ''Rules for Construction of Power Boilers,'' (2004 edition, including addenda through July 1, 2005). | § 192.153(a). |
| (7) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels,'' (2004 edition, including addenda through July 1, 2005). | §§ 192.153(a); 192.153(b); 192.153(d); 192.165(b)(3). |
| (8) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels—Alternative Rules,'' (2004 edition, including addenda through July 1, 2005). | §§ 192.153(b); 192.165(b)(3). |
| (9) ASME Boiler and Pressure Vessel Code, Section IX, ''Welding and Brazing Qualifications,'' (2004 edition, including addenda through July 1, 2005). | §§ 192.227(a); Item II, Appendix B. |
| E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS): | |
| (1) MSS SP–44–1996 (Reaffirmed; 2001) ''Steel Pipe Line Flanges.'' | § 192.147(a). |
| (2) [Reserved] | |
| F. National Fire Protection Association (NFPA): | |
| (1) NFPA 30 (2003) ''Flammable and Combustible Liquids Code.'' | § 192.735(b). |
| (2) NFPA 58 (2004) ''Liquefied Petroleum Gas Code (LP-Gas Code).'' | § 192.11(a); 192.11(b); 192.11(c). |
| (3) NFPA 59 (2004) ''Utility LP-Gas Plant Code.'' | §§ 192.11(a); 192.11(b); 192.11(c). |
| (4) NFPA 70 (2005) ''National Electrical Code.'' | §§ 192.163(e); 192.189(c). |
| G. Plastics Pipe Institute, Inc. (PPI): | |
| (1) PPI TR–3/2004 (2004) ''Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe.''. | § 192.121. |
| H. NACE International (NACE): | |
| (1) NACE Standard RP0502–2002 ''Pipeline External Corrosion Direct Assessment Methodology.''. | §§ 192.923(b)(1); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(1)(ii); 192.925(b)(2) Introductory text; 192.925(b)(3) Introductory text; 192.925(b)(3)(ii); 192.925(b)(iv); 192.925(b)(4) Introductory text; 192.925(b)(4)(ii); 192.931(d); 192.935(b)(1)(iv); 192.939(a)(2). |
| I. Gas Technology Institute (GTI): | |
| (1) GRI 02/0057 (2002) ''Internal Corrosion Direct Assessment of Gas Transmission Pipelines Methodology.''. | § 192.927(c)(2). |

■ 4. In part 192, revise ''(ibr, *see* § 192.121)'' to read ''(incorporated by reference, *see* § 192.121)'' wherever it appears.

■ 5. Section 192.121 is amended by revising the definition of strength ''S'' to read as follows:

**§ 192.121 Design of plastic pipe.**

* * * * *

S = For thermoplastic pipe, the HDB is determined in accordance with the listed specification at a temperature equal to 73 °F (23 °C), 100 °F (38 °C), 120 °F (49 °C), or 140 °F (60 °C). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2. of PPI TR–3/2004, *HDB/PDB/SDB/MRS Policies* (incorporated by reference, *see* § 192.7). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa).

* * * * *

■ 6. In § 192.123, paragraph (e) introductory text, remove ''[insert effective date of final rule]'' and add in its place ''July 14, 2004''.

■ 7. In part 192, revise ''(ibr, *see* § 192.619)'' to read ''(incorporated by reference, *see* § 192.619)'' wherever it appears.

■ 8. Section 192.619 is amended by revising paragraph (a)(1)(i) to read as follows:

**§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.**

(a) * * *

(1) * * *

(i) Eighty percent of the first test pressure that produces yield under section N5 of Appendix N of ASME B31.8 (incorporated by reference, *see* § 192.7), reduced by the appropriate factor in paragraph (a)(2)(ii) of this section; or

* * * * *

■ 9. In part 192, revise ''(ibr, *see* § 192.755)'' to read ''(incorporated by

reference, *see* § 192.755)'' wherever it appears.

■ 10. Part 192 is amended by removing the undesignated center heading, ''HIGH CONSEQUENCE AREAS''.

■ 11. The title of subpart O of part 192 is revised to read as follows:

### Subpart O—Gas Transmission Pipeline Integrity Management

■ 12. Section I of Appendix B is revised to read as follows:

### Appendix B to Part 192—Qualification of Pipe

#### I. Listed Pipe Specifications

API 5L—Steel pipe, ''API Specification for Line Pipe'' (incorporated by reference, *see* § 192.7).

ASTM A53/A53M—Steel pipe, ''Standard Specification for Pipe, Steel Black and Hot-Dipped, Zinc-Coated, Welded and Seamless'' (incorporated by reference, *see* § 192.7).

ASTM A106—Steel pipe, ''Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service'' (incorporated by reference, *see* § 192.7).

ASTM A333/A333M—Steel pipe, ''Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service'' (incorporated by reference, *see* § 192.7).

ASTM A381—Steel pipe, ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems'' (incorporated by reference, *see* § 192.7).

ASTM A671—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Pipe for Atmospheric and Lower Temperatures'' (incorporated by reference, *see* § 192.7).

ASTM A672—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures'' (incorporated by reference, *see* § 192.7).

ASTM A691—Steel pipe, ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High Pressure Service at High Temperatures'' (incorporated by reference, *see* § 192.7).

ASTM D2513—Thermoplastic pipe and tubing, ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings'' (incorporated by reference, *see* § 192.7).

ASTM D2517—Thermosetting plastic pipe and tubing, ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings'' (incorporated by reference, *see* § 192.7).

## PART 193—[AMENDED]

■ 1. The authority citation for part 193 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53.

■ 2. In part 193, revise ''(ibr, *see* § 193.2013)'' to read ''(incorporated by reference, *see* § 193.2013)'' wherever it appears.

■ 3. Section 193.2013 is revised to read as follows:

#### 193.2013 Incorporation by reference.

(a) Any document or portion thereof incorporated by reference in this part is included in this part as though it were printed in full. When only a portion of a document is referenced, then this part incorporates only that referenced portion of the document and the remainder is not incorporated. Applicable editions are listed in paragraph (c) of this section in parentheses following the title of the referenced material. Earlier editions listed in previous editions of this section may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR for a listing of the earlier editions.

(b) All incorporated materials are available for inspection in the Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street, SW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/IBR_locations.html.*

Documents incorporated by reference are available from the publishers as follows:

A. American Gas Association (AGA), 400 North Capitol Street, NW., Washington, DC 20001.

B. American Society of Civil Engineers (ASCE), Parallel Centre, 1801 Alexander Bell Drive, Reston, VA 20191–4400.

C. ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

D. Gas Technology Institute (GTI), 1700 S. Mount Prospect Road, Des Plaines, IL 60018.

E. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

(c) Documents incorporated by reference.

| Source and name of referenced material | 49 CFR reference |
|---|---|
| A. American Gas Association (AGA): | |
| (1) ''Purging Principles and Practices,'' (3rd edition, 2001). | §§ 193.2513; 193.2517; 193.2615. |
| B. American Society of Civil Engineers (ASCE): | |
| (1) SEI/ASCE 7–02 ''Minimum Design Loads for Buildings and Other Structures,'' (2002 edition).. | § 193.2067. |
| C. ASME International (ASME): | |
| (1) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels,'' (2004 edition, including addenda through July 1, 2005). | § 193.2321. |
| (2) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels—Alternative Rules,'' (2004 edition, including addenda through July 1, 2005). | § 193.2321. |
| D. Gas Technology Institute (GTI): | |
| (1) GRI–89/0176 ''LNGFIRE: A Thermal Radiation Model for LNG Fires,'' (June 29, 1990) | § 193.2057. |
| (2) GTI–04/0049 (April 2004) ''LNG Vapor Dispersion Prediction with the DEGADIS 2.1: Dense Gas Dispersion Model for LNG Vapor Dispersion''. | § 193.2059. |
| (3) GRI–96/0396.5 ''Evaluation of Mitigation Methods for Accidental LNG Releases, Volume 5: Using FEM3A for LNG Accident Consequence Analyses,'' (April 1997). | § 193.2059. |
| E. National Fire Protection Association (NFPA): | |
| (1) NFPA 59A (2001) ''Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG).''. | §§ 193.2019; 193.2051; 193.2057; 193.2059; 193.2101; 193.2301; 193.2303; 193.2401; 193.2521; 193.2639; 193.2801. |

■ 4. In part 193, revise ''(ibr, *see* § 193.2067)'' to read ''(incorporated by reference, *see* § 193.2067)'' wherever it appears.

■ 5. Section 193.2067 is amended by revising paragraph (b)(1) to read as follows:

**§ 193.2067 Wind forces.**

* * * * *

(b) * * *

(1) For shop fabricated containers of LNG or other hazardous fluids with a capacity of not more than 70,000 gallons, applicable wind load data in SEI/ASCE 7–02 (incorporated by reference, *see* § 193.2013).

* * * * *

## PART 195—[AMENDED]

■ 1. The authority citation for part 195 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. In part 195, revise ''(ibr, *see* § 195.3)'' to read ''(incorporated by reference, *see* § 195.3)'' wherever it appears.

■ 3. Section 195.3 is amended by revising section heading and paragraphs (b) and (c) to read as follows:

**§ 195.3 Incorporation by reference.**

* * * * *

(b) All incorporated materials are available for inspection in the Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street, SW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, materials incorporated by reference are available as follows:

1. Pipeline Research Council International, Inc. (PRCI), c/o Technical Toolboxes, 3801 Kirby Drive, Suite 520, Houston, TX 77098.

2. American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

3. ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

4. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NE., Vienna, VA 22180.

5. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

6. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

7. NACE International, 1440 South Creek Drive, Houston, TX 77084.

(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:

| Source and name of referenced material | 49 CFR reference |
|---|---|
| A. Pipeline Research Council International, Inc. (PRCI): | |
| (1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989). The RSTRENG program may be used for calculating remaining strength. | § 195.452(h)(4)(B). |
| B. American Petroleum Institute (API): | |
| (1) API Specification 5L ''Specification for Line Pipe,'' (43rd edition and errata, 2004) | §§ 195.106(b)(1)(i); 195.106(e). |
| (2) API Specification 6D ''Pipeline Valves'' (22nd edition, January 2002) | § 195.116(d). |
| (3) API Specification 12F ''Specification for Shop Welded Tanks for Storage of Production Liquids,'' (11th edition, 1994). | §§ 195.132(b)(1); 195.205(b)(2); 195.264(b)(1); 195.264(e)(1); 195.307(a); 195.565; 195.579(d). |
| (4) API 510 ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration,'' (8th edition, 1997 including Addenda 1 through 4). | §§ 195.205(b)(3); 195.432(c). |
| (5) API 620 ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks,'' (10th edition, 2002 including Addendum 1). | §§ 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b). |
| (6) API 650 ''Welded Steel Tanks for Oil Storage,'' (10th edition, 1998 including Addenda 1–3). | §§ 195.132(b)(3); 195.205(b)(1); 195.264(b)(1); 195.264(e)(2); 195.307l; 195.307(d); 195.565; 195.579(d). |
| (7) API Recommended Practice 651 ''Cathodic Protection of Aboveground Petroleum Storage Tanks,'' (2nd edition, December 1997). | §§ 195.565; 195.579(d). |
| (8) API Recommended Practice 652 ''Lining of Aboveground Petroleum Storage Tank Bottoms,'' (2nd edition, December 1997). | § 195.579(d). |
| (9) API 653 ''Tank Inspection, Repair, Alteration, and Reconstruction,'' (3rd edition, 2001 including Addendum 1, 2003). | §§ 195.205(b)(1); 195.432(b). |
| (10) API 1104 ''Welding of Pipelines and Related Facilities,'' (19th edition, 1999 including October 31, 2001 errata). | §§ 195.222; 195.228(b); 195.214(a). |
| (11) API 1130 ''Computational Pipeline Monitoring for Liquid Pipelines,'' (2nd edition, 2002) | §§ 195.134; 195.444. |
| (12) API 2000 ''Venting Atmospheric and Low-Pressure Storage Tanks,'' (5th edition, April 1998). | §§ 195.264(e)(2); 195.264(e)(3). |
| (13) API Recommended Practice 2003 ''Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents,'' (6th edition, 1998). | § 195.405(a). |
| (14) API 2026 ''Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service,'' (2nd edition, 1998). | § 195.405(b). |
| (15) API Recommended Practice 2350 ''Overfill Protection for Storage Tanks In Petroleum Facilities,'' (2nd edition, 1996). | § 195.428l. |
| (16) API 2510 ''Design and Construction of LPG Installations,'' (8th edition, 2001) | §§ 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e);195.428(c); 195.432(c). |
| (17) API Recommended Practice 1162 ''Public Awareness Programs for Pipeline Operators,'' (1st edition, December 2003). | §§ 195.440(a); 195.440(b); 195.440(c). |
| C. ASME International (ASME): | |
| (1) ASME B16.9–2003 (February 2004) ''Factory-Made Wrought Steel Butt Welding Fittings'' | § 195.118(a). |

| Source and name of referenced material | 49 CFR reference |
|---|---|
| (2) ASME B31.4–2002 (October 2002) ''Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids''. | § 195.452(h)(4)(i). |
| (3) ASME B31G–1991 (Reaffirmed; 2004) ''Manual for Determining the Remaining Strength of Corroded Pipelines''. | §§ 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D). |
| (4) ASME B31.8–2003 (February 2004) ''Gas Transmission and Distribution Piping Systems'' | §§ 195.5(a)(1)(i); 195.406(a)(1)(i). |
| (5) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 ''Rules for Construction of Pressure Vessels,'' (2004 edition, including addenda through July 1, 2005). | §§ 195.124; 195.307(e). |
| (6) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 ''Rules for Construction for Pressure Vessels—Alternative Rules,'' (2004 edition, including addenda through July 1, 2005). | § 195.307(e). |
| (7) ASME Boiler and Pressure Vessel Code, Section IX ''Welding and Brazing Qualifications,'' (2004 edition, including addenda through July 1, 2005). | § 195.222. |
| D. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS): | |
| (1) MSS SP–75–2004 ''Specification for High Test Wrought Butt Welding Fittings'' | § 195.118(a). |
| (2) [Reserved] | |
| E. American Society for Testing and Materials (ASTM): | |
| (1) ASTM A53/A53M–04a (2004) ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless''. | § 195.106(e). |
| (2) ASTM A106/A106M–04b (2004) ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service''. | § 195.106(e). |
| (3) ASTM A333/A333M–05 ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''. | § 195.106(e). |
| (4) ASTM A381–96 (Reapproved 2001) ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems''. | § 195.106(e). |
| (5) ASTM A671–04 (2004) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''. | § 195.106(e). |
| (6) ASTM A672–96 (Reapproved 2001) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures.''. | § 195.106(e). |
| (7) ASTM A691–98 (Reapproved 2002) ''Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures.''. | § 195.106(e). |
| F. National Fire Protection Association (NFPA): | |
| (1) NFPA 30 (2003) ''Flammable and Combustible Liquids Code'' | § 195.264(b)(1). |
| (2) [Reserved]. | |
| G. NACE International (NACE): | |
| (1) NACE Standard RP0169–2002 ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems''. | §§ 195.571; 195.573. |
| (2) NACE Standard RP0502–2002 ''Pipeline External Corrosion Direct Assessment Methodology''. | § 195.588. |

■ 4. In part 195, revise ''(ibr, *see* § 195.116)'' to read ''(incorporated by reference, *see* § 195.116)'' wherever it appears.

■ 5. Section 195.116 is amended by revising paragraph (d) to read as follows:

**§ 195.116 Valves.**

* * * * *

(d) Each valve must be both hydrostatically shell tested and hydrostatically seat tested without leakage to at least the requirements set forth in section 10 of API Standard 6D (incorporated by reference, *see* § 195.3).

* * * * *

■ 6. In part 195, revise ''(ibr, *see* § 195.264)'' to read ''(incorporated by reference, *see* § 195.264)'' wherever it appears.

■ 7. Section 195.264 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(2), (e)(3), and (e)(4) to read as follows:

**§ 195.264 Impoundment, protection against entry, normal/emergency venting or pressure/vacuum relief for aboveground breakout tanks.**

* * * * *

(b) * * *

(1) * * *

(i) Impoundment around a breakout tank must be installed in accordance with section 4.3.2.3.2; and

(ii) Impoundment by drainage to a remote impounding area must be installed in accordance with section 4.3.2.3.1.

(2) For tanks built to API 2510, the installation of impoundment must be in accordance with section 5 or 11 of API 2510 (incorporated by reference, *see* § 195.3).

* * * * *

(e) * * *

(3) Pressure-relieving and emergency vacuum-relieving devices installed on low pressure tanks built to API Standard 620 must be in accordance with section 9 of API Standard 620 (incorporated by reference, *see* § 195.3) and its references to the normal and emergency venting requirements in API Standard 2000 (incorporated by reference, *see* § 195.3).

(4) Pressure and vacuum-relieving devices installed on high pressure tanks built to API Standard 2510 must be in accordance with sections 7 or 11 of API 2510 (incorporated by reference, *see* § 195.3).

■ 8. In part 195, revise ''(ibr, *see* § 195.307)'' to read ''(incorporated by reference, *see* § 195.307)'' wherever it appears.

■ 9. Section 195.307 is amended by revising paragraph (b) to read as follows:

**§ 195.307 Pressure testing aboveground breakout tanks.**

* * * * *

(b) For aboveground breakout tanks built to API Standard 620 and first placed in service after October 2, 2000, hydrostatic and pneumatic testing must be in accordance with section 7.18 of API Standard 620 (incorporated by reference, *see* § 195.3).

* * * * *

■ 10. In part 195, revise ''(ibr, *see* § 195.571)'' to read ''(incorporated by reference, *see* § 195.571)'' wherever it appears.

■ 11. Section 195.571 is revised to read as follows:

**§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?**

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2 and 6.3 of NACE Standard RP 0169 (incorporated by reference, *see* § 195.3).

■ 12. In part 195, revise ''(ibr, *see* § 195.573)'' to read ''(incorporated by reference, *see* § 195.573)'' wherever it appears.

■ 13. Section 195.573 is amended by revising paragraph (a)(2) to read as follows:

**§ 195.573 What must I do to monitor external corrosion control?**

(a) * * *

(2) Identify not more than 2 years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of paragraph 10.1.1.3 of NACE Standard RP 0169 (incorporated by reference, *see* § 195.3).

* * * * *

Issued in Washington, DC, on May 31, 2006.

**Brigham A. McCown,**

*Acting Administrator.*

[FR Doc. E6–9059 Filed 6–8–06; 8:45 am]

BILLING CODE 4910–60–P

# Proposed Rules

Federal Register
Vol. 71, No. 111
Friday, June 9, 2006

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–24487; Directorate Identifier 2006–NE–13–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, PW4090–3, and PW4098 Turbofan Engines

**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 Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, PW4090–3, and PW4098 turbofan engines, with certain front turbine hub part numbers installed. This proposed AD would require a onetime visual inspection of the anti-rotation slots in the front turbine hub, for a machining nonconformance, and its replacement if the inspection failed. This proposed AD results from a report of a crack found in an anti-rotation slot of a front turbine hub, during overhaul shop inspection. The anti-rotation slot geometry was not machined in conformance with the design drawing. We are proposing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

**DATES:** We must receive any comments on this proposed AD by August 8, 2006.

**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.
- Governmentwide 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 can get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

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:** Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7751; fax (781) 238–7199.

**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–2006–24487; Directorate Identifier 2006–NE–13–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 Web site, anyone can find and read the comments in any of our dockets. This includes 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 DOT Docket Office 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

We received a report that during the overhaul shop inspection of a front turbine hub, a crack was found in an anti-rotation slot. Analysis by Pratt & Whitney revealed that the anti-rotation slot geometry was not machined in conformance with the design drawing. This nonconformance consisted of extra fillet radii in the anti-rotation slots. Extra fillet radii can cause local stress concentrations in the anti-rotation slots that lead to thermal mechanical fatigue and cracking. This condition, if not corrected, could result in uncontained engine failure, damage to the airplane, and injury to passengers.

### Relevant Service Information

We have reviewed and approved the technical contents of Pratt & Whitney Service Bulletin No. PW4G–112–72–282, Revision 1, dated March 3, 2006. That Service Bulletin identifies the suspect population of front turbine hubs that might be affected by extra fillet radii by part number and serial number, describes procedures for visually inspecting the anti-rotation slots, and illustrates a machining nonconformance.

### 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 at the next exposure of the rear side of the front turbine hub, a onetime visual inspection for extra fillet radii in the anti-rotation

slots, and its replacement if the inspection is failed. The proposed AD would require you to use the service information described previously to perform these actions.

**Costs of Compliance**

We estimate that this proposed AD would affect 117 Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, PW4090–3, and PW4098 turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take one workhour per engine to perform the proposed actions, and that the average labor rate is $80 per workhour. A replacement front turbine hub would cost about $253,000 for a PW4074, PW4074D, PW4077, PW4077D, or PW4084D engine, and about $283,000 for a PW4090, PW4090–3, or PW4098 engine. To date, the failure rate of inspected front turbine hubs is at ten percent. Assuming the failed front turbine hubs had 100 percent available life at the time of the inspection, the total cost of the proposed AD for the U.S. operators would be about $3,144,960.

**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:

**Pratt & Whitney:** Docket No. FAA–2006–24487; Directorate Identifier 2006–NE–13-AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 8, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, PW4090–3, and PW4098 turbofan engines, with front turbine hub part numbers 50L761, 52L701, 55L221, 52L901, 53L121, 55L521, and 53L021, installed. These engines are installed on, but not limited to, Boeing 777 airplanes.

**Unsafe Condition**

(d) This AD results from a report of a crack found in an anti-rotation slot of a front turbine hub, during overhaul shop inspection. The anti-rotation slot geometry was not machined in conformance with the design drawing. We are issuing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

**Compliance**

(e) You are responsible for having the actions required by this AD performed at the next exposure of the rear side of the front turbine hub after the effective date of this AD, unless the actions have already been done.

**Onetime Visual Inspection**

(f) For front turbine hubs listed by part number and serial number in Table 1, Table 2, and Table 3 of Pratt & Whitney Service Bulletin (SB) No. PW4G–112–72–282, Revision 1, dated March 3, 2006, do the following:

(1) Perform a onetime visual inspection for extra fillet radii in the anti-rotation slots.

(2) Use paragraphs 1.A. through 1.C.(2) of the Accomplishment Instructions of Pratt & Whitney SB No. PW4G–112–72–282, Revision 1, dated March 3, 2006, to do the inspection.

(3) Remove from service any front turbine hub that has extra fillet radii in the anti-rotation slots and install a serviceable front turbine hub.

**Prohibition of Front Turbine Hubs That Have Extra Fillet Radii in the Anti-Rotation Slots**

(g) After the effective date of this AD, do not install any front turbine hub that has extra fillet radii in the anti-rotation slots, onto any engine.

**Previous Credit**

(h) Previous credit is allowed for front turbine hubs inspected using Pratt & Whitney SB No. PW4G–112–72–282, dated February 27, 2006, or Revision 1, dated March 3, 2006, before the effective date of this AD.

**Alternative Methods of Compliance**

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Issued in Burlington, Massachusetts, on June 5, 2006.

**Thomas A. Boudreau,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 06–5242 Filed 6–8–06; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2006–0464; FRL–8182–1]**

### Revisions to the Nevada State Implementation Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Nevada State Implementation Plan (SIP). These revisions concern the Air Pollution sections of the Nevada Revised Statutes (NRS). We are proposing to approve the

submitted statutes in order to bring the Nevada SIP up to date. These statutes are being approved under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by July 10, 2006.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2006–0464, by one of the following methods:

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

2. E-mail: *steckel.andrew@epa.gov.*

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

*Docket:* The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Julie Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov.*

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

**Table of Contents**

I. The State's Submittal
A. What statutes did the state submit for approval?
B. What is the regulatory history of the Nevada SIP?
C. What is the purpose of this proposed rule?
II. EPA's Evaluation and Action
A. How is EPA evaluating the statutes submitted for approval?
B. Do the statutes meet the evaluation criteria?
C. Public comment and final action.
III. Statutory and Executive Order Reviews

## I. The State's Submittal

*A. What statutes did the state submit for approval?*

The Governor's designee, the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP), submitted a large revision to the applicable SIP on January 12, 2006. On March 23, 2006, the Nevada SIP submittal dated January 12, 2006 was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. On March 24, 2006, the NDEP submitted an additional revision consisting of a definition found in Title 0, Preliminary Chapter of the General Provisions of the NRS. On May 17, 2006, the submittal dated March 24, 2006 was found to meet the completeness criteria in 40 CFR part 51 Appendix V. The primary purpose of these revisions is to clarify and harmonize State and federally enforceable requirements. Because these revisions incorporate so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review and act on the submittal in a series of separate actions. The first such action was finalized in the **Federal Register** on March 27, 2006, (71 FR 15040). The remaining portions of the submittal will be acted on in future **Federal Register** actions.

The following table lists the Nevada Revised Statutes (NRS) addressed by this proposal with the dates they were submitted by NDEP.

STATUTES SUBMITTED FOR APPROVAL

| Nevada revised statutes (NRS) | Title | Submittal date |
|---|---|---|
| 445B.105 | Definitions | 01/12/06 |
| 445B.110 | Air contaminant | 01/12/06 |
| 445B.115 | Air pollution | 01/12/06 |
| 445B.120 | Commission | 01/12/06 |
| 445B.125 | Department | 01/12/06 |
| 445B.130 | Director | 01/12/06 |
| 445B.135 | Federal Act | 01/12/06 |
| 445B.140 | Hazardous air pollutant | 01/12/06 |
| 445B.145 | Operating permit | 01/12/06 |
| 445B.150 | Person | 01/12/06 |
| 0.039 | Person | 03/24/06 |
| 445B.155 | Source and indirect source | 01/12/06 |
| 445B.210 | Powers of Commission | 01/12/06 |
| 445B.220 | Additional powers of Commission | 01/12/06 |
| 445B.225 | Power of Commission to require testing of sources | 01/12/06 |
| 445B.235 | Additional powers of the Department | 01/12/06 |
| 445B.245 | Power of Department to perform or require test of emissions from stacks | 01/12/06 |
| 445B.275 | Creation; members; terms | 01/12/06 |
| 445B.280 | Attendance of witnesses at hearing; contempt; compensation | 01/12/06 |
| 445B.300 | Operating permit for source of air contaminant; notice and approval of proposed construction; administrative fees; failure of Commission or Department to act. | 01/12/06 |
| 445B.320 | Approval of plans and specifications required before construction or alteration of structure | 01/12/06 |

STATUTES SUBMITTED FOR APPROVAL—Continued

| Nevada revised statutes (NRS) | Title | Submittal date |
|---|---|---|
| 445B.500 | Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties; regulation of certain electric plants prohibited. | 01/12/06 |
| 445B.510 | Commission may require program for designated area | 01/12/06 |
| 445B.520 | Commission may establish or supersede county program | 01/12/06 |
| 445B.530 | Commission may assume jurisdiction over specific classes of air contaminants | 01/12/06 |
| 445B.540 | Restoration of superseded local program; continuation of existing local program | 01/12/06 |
| 445B.560 | Plan or procedure for emergency | 01/12/06 |
| 445B.595 | Governmental sources of air contaminants to comply with state and local provisions regarding air pollution; permit to set fire for training purposes; planning and zoning agencies to consider effects on quality of air. | 01/12/06 |

*B. What is the regulatory history of the Nevada SIP?*

Pursuant to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original SIP to EPA in January 1972. EPA approved certain portions of the original SIP and disapproved others under CAA section 110(a). See 37 FR 10842 (May 31, 1972). For some of the disapproved portions, EPA promulgated substitute provisions, referred to as Federal implementation plan (FIP) provisions, under CAA section 110(c).

The original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in title 40, chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980's, Nevada reorganized and re-codified its air quality rules as sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B of title 40 of the NRS.

Nevada adopted and submitted many revisions to the original set of regulations and statutes in the SIP, some of which EPA approved on February 6, 1975 at 40 FR 5511; on March 26, 1975 at 40 FR 13306; on January 9, 1978 at 43 FR 1341; on January 24, 1978 at 43 FR 3278; on August 21, 1978 at 43 FR 36932; on July 10, 1980 at 45 FR 46384; on April 14, 1981 at 46 FR 21758; on August 27, 1981 at 46 FR 43141; on March 3, 1982 at 47 FR 9833; on April 13, 1982 at 47 FR 15790; on June 18, 1982 at 47 FR 26386; on June 23, 1982 at 47 FR 27070; on March 27, 1984 at 49 FR 11626. Since 1984, EPA has approved very few revisions to Nevada's applicable SIP despite numerous changes that have been adopted locally. As a result, the version of the rules enforceable by NDEP is often quite different from the SIP version enforceable by EPA.

*C. What is the purpose of this proposed rule?*

The purpose of this proposal is to bring the applicable SIP up to date. We are proposing to approve the statutes contained in Nevada's January 12, 2006 and March 24, 2006 submittals.

## II. EPA's Evaluation and Action

*A. How is EPA evaluating the statutes submitted for approval?*

We have reviewed the statutes submitted by NDEP on January 12, 2006 and March 24, 2006 for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a)(2) and 40 CFR part 51 and also for compliance with CAA requirements for SIP revisions in CAA section 110(l) and 193.

*B. Do the statutes meet the evaluation criteria?*

We believe the NRS statutes listed in the table are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

*C. Public Comment and Final Action*

Because EPA believes the Nevada SIP will continue to fulfill all relevant requirements, we are proposing to fully approve the submitted revisions in accordance with section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will approve these statutes into the federally enforceable SIP.

## 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, Reporting and recordkeeping requirements.

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

Dated: May 25, 2006.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E6–9000 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2006–0495; FRL–8072–8]**

### Food-Contact Surface Sanitizing Solutions; Proposed Revocation of Tolerance Exemptions for Sanitizers with No Food-Contact Uses in Registered Pesticide Products and with Insufficient Data for Reassessment

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes under section 408(e)(1) of the Federal Food, Drug and Cosmetic Act (FFDCA) to revoke the existing exemption from the requirement of a tolerance for the food-contact surface sanitizing solution use of certain antimicrobial pesticides because the Agency has determined that the tolerance exemption corresponds to the food-contact sanitizing use for which there are no longer registered pesticide products, and because there are insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The regulatory actions proposed in this document will contribute toward the Agency's tolerance reassessment requirements under the FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances that were in existence on August 2, 1996.

**DATES:** Comments must be received on or before July 10, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0495, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0495. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Laura Bailey, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: (703) 308–6212; e-mail address: *bailey.laura@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

*C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?*

This proposed rule provides a comment period of 30 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 30–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection to the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

*A. What Action is the Agency Taking?*

EPA is proposing to revoke several food-contact surface sanitizing solutions tolerance exemptions in 40 CFR 180.940, because these specific tolerance exemptions correspond to uses no longer current or registered in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and because there are insufficient data to make the determination of safety required by FFDCA. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active or inert ingredients on crops for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. In addition, the safety finding required by FFDCA section 408(b)(2) cannot be made for certain antimicrobial ingredient tolerance exemptions because there are insufficient data.

The specific tolerance exemptions proposed for revocation in 40 CFR 180.940 are as follows:

1. The entry for Potassium Permanganate; CAS Reg. No. 7722–64–7; is proposed to be removed from the tables in paragraphs (a) and (c).

2. The entry for Sodium mono- and didodecylphenoxy-benzenedisulfonate; CAS Reg. No. None; is proposed to be removed from the tables in paragraphs (b) and (c).

3. The entry for Alkyl ($C_{12}$–$C_{15}$) monoether of mixed (ethylene–propylene) polyalkylene glycol, cloud point of 70-77 °C in 1% aqueous solution, average molecular weight (in amu), 807; CAS Reg. No. None; is proposed to be removed from the table in paragraph (c).

4. The entry for Benzensulfonamide, N–chloro–4-methyl, sodium salt; CAS Reg. No. 127–65–1; is proposed to be removed from the table in paragraph (c).

5. The entry for Benzenesulfonic acid, oxybis[dodecyl-; CAS Reg. No. 30260–73–2; is proposed to be removed from the table in paragraph (c).

6. The entry for Calcium bromide; CAS Reg. No. 7789–41–5; is proposed to be removed from the table in paragraph (c).

7. The entry for Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis [propanol] (4:1); CAS No. 11111–34–5; is proposed to be removed from the tables in paragraphs (b) and (c).

*B. What is the Agency's Authority for Taking this Action?*

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food–use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food–use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active or inert ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances or exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances or exemptions even when corresponding domestic uses are canceled if the tolerances or exemptions are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances or exemptions not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance or exemption may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances and exemptions. If the cumulative risk is such that the tolerances or exemptions in aggregate are not safe, then every one of these tolerances and/or exemptions is potentially vulnerable to revocation. Furthermore, if unneeded tolerances or exemptions are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or exemptions or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances or exemptions for residues on crops for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances or exemptions. Through this proposed rule, the Agency is inviting individuals who need these import tolerances or exemptions to identify themselves and the tolerances or exemptions that are needed to cover imported commodities.

Parties interested in retention of the exemptions in this proposal should be aware that additional data are needed to support retention. The data needed include: A set of basic toxicity studies, chemistry studies and exposure studies. Especially important to reassessment is an acceptable repeat-dose study. In the absence of this data, EPA cannot make the required reasonable certainty of no harm finding. If the needed data is not submitted during the comment period on this proposal, these tolerances will be revoked on this ground as well.

*C. When do These Actions Become Effective?*

EPA is proposing that revocation of these exemptions become effective 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. For this rule, the proposed revocations will affect exemptions for active or inert ingredients which have not been used in registered products, in some cases, for many years. The Agency believes that existing stocks of pesticide products containing active or inert ingredients covered by the exemptions proposed for revocation have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the exemption. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities treated with the pesticides subject to this proposal, and in the channels of trade following the exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

*D. Length of Comment Period*

Pursuant to section 408(e)(2) EPA concludes that there is good cause for providing a comment period of 30, as opposed to 60, days. The lack of use of the pesticides covered by this proposal in pesticide products indicates a lack of interest in these particular pesticides. Should any person need additional time to comment on this proposal, a request for a comment extension should be filed with EPA well before the expiration of the 30–day comment period.

## III. Are the Proposed Actions Consistent with International Obligations?

The exemption revocations in this proposal are not discriminatory and are designed to ensure that both domestically–produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance and exemption reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and exemptions and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances and exemptions with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance and exemption reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for tolerances or exemptions pertaining to imported foods (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select Regulations and Proposed Rules and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to

the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

## IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerance exemptions established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (e.g., tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances or exemptions might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2006.

**Betty Shackleford,**

*Acting Director, Antimicrobials Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended asfollows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

### § 180.940 [Amended]

2. Section 180.940 is amended as follows:

i. In the tables to paragraphs (a) and (c) by removing the entry for''Potassium Permanganate'' (CAS Reg. No.7722–64–7).

ii. In the tables to paragraphs (b) and (c) by removing the entries for ''Sodium mono-and didodecylphenoxy-benzenedisulfonate'' (CAS Reg. No. None); and ''Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis [propanol] (4:1)'' (CAS Reg. No. 11111–34–5).

iii. In the table to paragraph (c) by removing the entries for ''Alkyl ($C_{12}$-$C_{15}$) monoether of mixed (ethylene-propylene) polyalkylene glycol, cloud point of 70-77 °C in 1% aqueous solution, average molecular weight (in amu), 807;'' (CAS Reg. No. None); ''Benzensulfonamide, N-chloro-4-methyl, sodium salt;'' (CAS Reg. No. 127–65–1); ''Benzenesulfonic acid, oxybis[dodecyl-'' (CAS Reg. No. 30260–73–2); and ''Calcium bromide'' (CAS Reg. No. 7789–41–5)

[FR Doc. E6–8928 Filed 6–8–06; 8:45 am]

BILLING CODE 6560–50–S

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**42 CFR Part 100**

**RIN 0905–AA68**

## National Vaccine Injury Compensation Program: Calculation of Average Cost of a Health Insurance Policy

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986, as amended (the Act), governs the National Vaccine Injury Compensation Program (VICP). The VICP, administered by the Secretary of Health and Human Services (the Secretary), provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary, and the filing of a petition with the United States Court of Federal Claims (the Court). In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the ''average cost of a health insurance policy, as determined by the Secretary.'' The Secretary now proposes a new method of calculating the average cost of a health insurance policy.

**DATES:** Comments must be submitted by August 8, 2006. Subject to consideration of the comments submitted, the Secretary intends to publish final regulations.

**ADDRESSES:** You may submit comments, identified by the Regulatory Information Number (RIN) 0905–AD25, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *gevans@hrsa.gov.* Include RIN 0905–AD25 in the subject line of the message.
- Mail: Geoffrey Evans, M.D., Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau, Health Resources and Services Administration (HRSA), Room 11C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

*Instructions:* All submissions received must include the agency name and RIN for this rulemaking. All comments received will be available for public inspection and copying without charge, including any personal information provided, at Parklawn Building, 5600 Fishers Lane Room 11C–26, Rockville, Maryland 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey Evans, M.D. at the mail or e-mail address above or by telephone at (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** Under the Act, an individual may file a petition with the Court for compensation for a vaccine-related injury or death. The Secretary is named by the Act as the Respondent in these proceedings and carries out other functions under the Act. The Secretary's authorities under the VICP established by the Act have been delegated to the HRSA.

The elements of compensation that may be awarded to a successful petitioner are set out in Section 2115 of the Public Health Service (PHS) Act, 42 U.S.C. 300aa–15. Subsection (a)(3)(B) specifically provides for compensation for lost earnings for a person who has sustained a vaccine-related injury before attaining the age of 18, and whose earning capacity is or has been impaired sufficiently to anticipate that such person is likely to suffer impaired earning capacity at age 18 and beyond. The injured person would be eligible to receive compensation for lost earnings, after the age of 18, which are calculated on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the ''* * * average cost of a health insurance policy, as determined by the Secretary.'' The wage data are taken from the Employment and Earnings survey done by the Department of Labor, Bureau of Labor Statistics (BLS). (Subsection (a)(3)(A) specifically provides for payment of actual and anticipated lost earnings for individuals injured after reaching age 18 and does not include deductions for taxes and the cost of health insurance.)

The Department of Health and Human Services (HHS) is proposing to revise the current methodology for calculating the average cost of a health insurance policy, which is an amount deducted from the award of compensation in certain cases. Due to the availability of an improved data source, the current methodology should be changed because the proposed methodology will yield a more accurate calculation of the average cost of a health insurance policy.

Currently, the methodology uses a baseline of $141.00, which was the average monthly premium cost for individuals covered under employment related group insurance in 1990 according to the 1990 Employer Health Benefits survey conducted by the Health Insurance Association of America (HIAA). This baseline of $141.00 has been increased by the increase in the medical care component of the Consumer Price Index (CPI)—All Urban Consumers, U.S. City Average, which is published by the BLS, plus a 2 percent per year increase. The medical care component of the CPI has been used because it was the only Federal Government survey available at the time which reflected average changes in the costs of health insurance. The two percent is added to account for technological advances in and higher utilization of health care. From time to time, the Secretary has published notices in the **Federal Register** with updated amounts which reflect the average monthly cost of a health insurance policy, as calculated above.

The medical care component of the CPI consists of the changes in the costs of medical care (*e.g.* non-prescription drugs and medical supplies), not just changes in the cost of health insurance. Furthermore, it only tracks the changes in the costs of health insurance, not the actual cost of a health insurance policy. Therefore, the Secretary is proposing a new methodology to calculate the average cost of a health insurance policy. The proposed methodology uses the Medical Expenditure Panel Survey–Insurance Component (MEPS–IC) data to periodically determine the baseline for calculating the average cost of a health insurance policy because it is the only national annual survey solely estimating health insurance costs among various populations that is conducted by a Federal Government agency. The MEPS–IC is conducted annually by the Agency for Healthcare Research and Quality (AHRQ), an agency within HHS. The MEPS–IC began in 1997 with data collected for calendar year 1996. It has the largest sample size of the national surveys used to estimate health insurance costs. The number of respondents ranges from 30,000 to 40,000 annually. For more information about MEPS–IC, call the Project Director, Center for Cost and Financing Studies, Medical Expenditure Panel Survey, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850; telephone (301) 427–1406, e-mail: *mepspd@ahrq.gov,* or visit the MEPS Web site at: *http://www.ahrq.gov/data/mepsix.htm.*

The Secretary proposes to obtain a new baseline periodically (generally on an annual basis) from the average total single premium per enrolled employee at private-sector establishments that offer health insurance, as reported by

the most recent MEPS–IC data. Because MEPS–IC data are collected retrospectively, there is a time lag between when the data are collected and when they are reported. Currently, this is a 2-year time lag. Therefore, the Secretary proposes increasing or decreasing the most recent MEPS–IC baseline by the annual percentage change(s) in the average monthly premium costs for covered single workers from the most recent Kaiser Family Foundation and Health Research and Educational Trust (KFF/HRET) annual survey, ''Employer Health Benefits'' or other authoritative sources that may be more accurate or appropriate in the future. If another authoritative source is used, the Secretary will publish a notice in the **Federal Register** announcing this change.

Since 1999, the KFF/HRET, independent non-profit organizations, have conducted the ''Employer Health Benefits'' survey. This survey collects prospective data from about 3,000 randomly selected public and private employers on the cost of health insurance benefits per employee per employer and combines the data for public and private employers. Data are collected based on the anticipated cost of a health insurance policy, not necessarily the actual cost because the data are collected prospectively. For more information about this survey, visit the KFF/HRET Web site at *http://www.kff.org/insurance/index.cfm.*

Using the KFF/HRET percentage change(s) to modify the baseline number would make the calculation of the average cost of a health insurance policy current, and would produce an accurate deduction from the compensation award. We note that the KFF/HRET survey data are reported the same year in which they are collected, and tend to have comparable annual percentage increases or decreases to the subsequent MEPS–IC data for the same years as detailed in the table in the Economic and Regulatory Impact Section of this NPRM. The annual percentage change as reported by the KFF/HRET survey provides a more accurate modifier than the addition of the medical care component of the CPI plus 2 percent, as has been used under the current regulation because the medical care component of the CPI consists of the changes in the costs of medical care (*e.g.* non-prescription drugs, medical supplies, health insurance), not the actual cost of a health insurance policy.

Given the current 2-year time lag, the calculation for 2005 would be as follows. In August 2005, MEPS–IC published the annual 2003 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The figure published was $3,481. This figure is divided by 12 months to determine the cost per month of $290.08 which is the proposed new baseline figure for 2003. The Secretary proposes that the baseline of $290.08 be increased or decreased by the percentage change reported by the most recent KFF/HRET survey. The percentage increase from 2003–2004 was 11.2 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy in 2004 is $322.57. The KFF/HRET reported increase from 2004–2005 was 9.2 percent. By adding this percentage increase to the calculated $322.57 for 2004, the calculated average monthly cost of a health insurance policy in 2005 would be $352.25. Under the current methodology, the calculated average monthly cost of a health insurance policy would be $374.82. If the revised calculation of the new baseline is published in the **Federal Register** in final form using this new methodology, the Secretary will include in the Final Rule the latest calculation of the average cost of a health insurance policy using the new methodology.

Since the KFF/HRET survey is published annually, the Department will periodically (generally on an annual basis) recalculate the average cost of a health insurance policy by obtaining a new baseline from the latest MEPS–IC data and updating this baseline using the percentage change(s) reported by the most recent data from KFF/HRET or other authoritative source that may be more accurate or appropriate in the future. The updated calculation will be published as a notice in the **Federal Register** and filed with the Court.

This proposed methodology will result in a more accurate reflection of the actual average cost of a health insurance policy as compared to the figure reached under the current methodology. Because the amount of compensation for lost wages is reduced by this figure for some petitioners receiving compensation under the VICP, such petitioners will receive a more accurate amount of compensation if the proposed methodology is adopted.

The reduction in the compensation is done once and that is at the time the award is made. It is based on the average cost of a health insurance policy at that point in time. No further reductions are made because of increases in the cost of a health insurance policy.

This proposed methodology will only apply to the determination of lost wages after the effective date of the Final Rule. Awards already made before this date will not be recalculated.

**Economic and Regulatory Impact**

*Regulatory Flexibility Act and Executive Order 12866*

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act of 1980 (RFA), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule. Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information.

Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. In the Secretary's view, the amendment proposed in this notice would require minimal resources to implement, if any. Therefore, in accordance with the RFA, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that the amendment proposed by this rule will not affect any entities defined as small under this Act and will not have a significant impact on a substantial number of small entities.

The change proposed here does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. The Secretary has determined that the proposed rule is not a ''major rule''' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. The Secretary conducted a cost analysis of the current versus the proposed methodology. The difference in using the current vs. proposed methodologies was calculated for a single claim. This difference was multiplied by the annual average percent of claims compensated that include this calculation (20

percent). The proposed methodology is estimated to increase the annual total amount of awards by $50,000. Therefore, the additional cost to the Federal government will be about $50,000 per year.

The table below compares the average cost of a health insurance policy using MEPS–IC only, KFF/HRET only and the proposed methodology.

| Year | KFF/HRET only | MEPS–IC only | Proposed methodology |
|---|---|---|---|
| 2000 | $202 | $221.22 | [1]$206.44 |
| 2001 | 221 | 240.77 | [2]232.46 |
| 2002 | 255 | 265.75 | [3]276.98 |
| 2003 | 282 | 290.08 | [4]309.61 |
| 2004 | 308 | N/A | [5]336.59 |
| 2005 | 335 | N/A | [6]352.25 |

N/A—Not available due to 2-year lag in reporting data.
[1] 1998 MEPS–IC increased by 1999 and 2000 percent changes from KFF/HRET.
[2] 1999 MEPS–IC increased by 2000 and 2001 percent changes from KFF/HRET.
[3] 2000 MEPS–IC increased by 2001and 2002 percent changes from KFF/HRET.
[4] 2001 MEPS–IC increased by 2002 and 2003 percent changes from KFF/HRET.
[5] 2002 MEPS–IC increased by 2003 and 2004 percent changes from KFF/HRET.
[6] 2003 MEPS–IC increased by 2004 and 2005 percent changes from KFF/HRET.

The table below shows a comparison of the average cost of a health insurance policy using the current and proposed methodologies, and the percent change between these methodologies.

| Year | Current methodology | Proposed methodology | Percent change (current vs. proposed) |
|---|---|---|---|
| 2000 | $276.28 | $206.44 | −25 |
| 2001 | 294.24 | 232.46 | −21 |
| 2002 | 313.78 | 276.98 | −12 |
| 2003 | 332.60 | 309.61 | −7 |
| 2004 | 353.81 | 336.59 | −5 |
| 2005 | 374.82 | 352.25 | −6 |

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

*Unfunded Mandates Reform Act of 1995*

The Secretary has determined that the amendment proposed in this notice would not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

*Federalism Impact Statement*

The Secretary has also reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The proposed rule would not ''have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

*Impact on Family Well-Being*

This proposed rule will not adversely affect the following elements of family well-being: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

*Impact of the New Rule*

If the amendment proposed in this notice is adopted, § 100.2 will be revised to incorporate a new methodology for calculating the average cost of a health insurance policy. As explained in this notice, we expect this new methodology to result in a more accurate reflection of the actual average cost of a health insurance policy as compared to the figure reached under the methodology that is currently used which resulted in a number that was too high in the past.

*Paperwork Reduction Act of 1980*

This proposed rule has no information collection requirements.

**List of Subjects**

Biologics, Compensation, Health insurance, Immunizations.

Dated: May 25, 2006.

**Elizabeth M. Duke,**

*Administrator, HRSA.*

Approved: February 28, 2006.

**Michael O. Leavitt,**

*Secretary.*

For the reasons stated above, HHS proposes to amend part 100 of 42 CFR as follows:

## PART 100—VACCINE INJURY COMPENSATION

1. The authority section for 42 CFR part 100 is revised to read as follows:

**Authority:** Secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); sec. 2114(c) and (e) of the PHS Act (42 U.S.C. 300aa–14(c) and (e)); sec. 2115(a)(3)(B) of the PHS Act (42 U.S.C. 300aa–15(a)(3)(B)); sec. 904(b) of Pub. L. 105–34, 111 Stat. 873; sec. 1503 of Pub. L. 105–277, 112 Stat. 2681–741; and sec. 523(a) of Pub. L. 106–170, 113 Stat. 1927–1928.

2. Section 100.2 is revised to read as follows:

### § 100.2 Average cost of a health insurance policy.

For purposes of determining the amount of compensation under the VICP, section 2115(a)(3)(B) of the PHS

Act, 42 U.S.C. 300aa–15(a)(3)(B), provides that certain individuals are entitled to receive an amount reflecting lost earnings, less certain deductions. One of the deductions is the average cost of a health insurance policy, as determined by the Secretary. The Secretary has determined that the average cost of a health insurance policy is $352.25 for 2005. This figure is calculated periodically (generally on an annual basis) using the most recent Medical Expenditure Panel Survey-Insurance Component (MEPS–IC) data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation and Health Research and Educational Trust (KFF/HRET) Employer Health Benefits survey or other authoritative source that may be more accurate or appropriate in the future. The revised amount will be effective upon its delivery by the Secretary to the United States Court of Federal Claims, and the amount will be published as a notice in the **Federal Register** periodically (generally on an annual basis).

[FR Doc. E6–8992 Filed 6–8–06; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 060525140–6140–01; I.D. 051106B]**

**RIN 0648–AT75**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 13C

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 13C to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Amendment 13C proposes management measures to end overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass and measures to allow moderate increases in recreational and commercial harvest of red porgy consistent with the rebuilding program for that stock.

For the commercial fisheries, this proposed rule would establish restrictive quotas for snowy grouper, golden tilefish, vermilion snapper, and black sea bass and, after the quotas are met, prohibit all purchase and sale of the applicable species and restrict all harvest and possession to the applicable bag limit; establish restrictive trip limits for snowy grouper and golden tilefish; require at least 2–inch (5.1–cm) mesh in the back panel of black sea bass pots; require black sea bass pots to be removed from the water after the quota is reached; change the fishing year for black sea bass; increase the trip limit for red porgy; establish a red porgy quota that would allow a moderate increase in harvest; and, after the red porgy quota is reached, prohibit all purchase and sale and restrict all harvest and possession to the bag limit.

For the recreational fisheries, this proposed rule would reduce the bag limits for snowy grouper, golden tilefish, and black sea bass; increase the minimum size limit for vermilion snapper and black sea bass; change the fishing year for black sea bass; and increase the bag limit for red porgy.

The intended effects of this proposed rule are to eliminate or phase out overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass; and increase red porgy harvest consistent with an updated stock assessment and rebuilding plan to achieve optimum yield.

**DATES:** Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on July 24, 2006.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- E-mail: *0648–AT75.Proposed@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AT75.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: John McGovern, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308; Attention: John McGovern.

Copies of Amendment 13C may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366 or 866–SAFMC–10 (toll free); fax: 843–769–4520; e-mail: *safmc@safmc.net*. Amendment 13C includes a Final Environmental Impact Statement (FEIS), a Biological Assessment, an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** John McGovern, telephone: 727–824–5305; fax: 727–824–5308; e-mail: *John.McGovern@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. NMFS issues this proposed rule to implement Amendment 13C to the FMP.

### Background

Recent stock assessments indicate that snowy grouper, golden tilefish, vermilion snapper, and black sea bass are experiencing overfishing. Overfishing means that the current rate of fishing mortality jeopardizes the capacity of the fishery for a species to produce its maximum sustainable yield on a continuing basis. Reductions in catch are needed to end overfishing.

Red porgy, however, are no longer experiencing overfishing, and the stock is rebuilding. Accordingly, catch can be increased to meet the annual allowable biological catch established in the rebuilding program for this species.

### Provisions of This Proposed Rule

(Note that all poundages in this proposed rule are expressed in terms of gutted weight.)

*Snowy Grouper*

In the commercial fishery for snowy grouper, this proposed rule would:

Reduce, over a 3-year period, the commercial quota from 344,508 lb (156,266 kg), gutted weight, to 84,000 lb (38,102 kg), gutted weight. The quota would be reduced from 344,508 lb (156,266 kg) to 151,000 lb (68,492 kg) for year 1; to 118,000 lb (53,524 kg) for year 2; and to 84,000 lb (38,102 kg) for

year 3 and thereafter. This quota represents a 69–percent reduction in harvest from average landings during 1999–2003 and would be expected to end overfishing in 2009.

Reduce, over a 3-year period, the trip limit from 300 lb (136 kg) to 100 lb (45.4 kg), until the quota is taken. The trip limit would be reduced from 300 lb (136 kg) to 275 lb (125 kg) for year 1; to 175 lb (79.4 kg) for year 2; and to 100 lb (45.4 kg) for year 3 and thereafter. Reduced trip limits are intended to extend the duration of the fishing season as long as practicable, consistent with the available quota.

In the recreational fishery for snowy grouper, this proposed rule would limit possession to one snowy grouper per person per day within the 5–grouper per person per day aggregate recreational bag limit. This bag limit would be expected to provide an incentive to avoid snowy grouper, thus contributing to reduced mortality of this species.

*Golden Tilefish*

In the commercial fishery for golden tilefish, this proposed rule would:

Reduce the commercial quota from 1,001,663 lb (454,347 kg), gutted weight, to 295,000 lb (133,810 kg), gutted weight. This quota is designed to reduce commercial catches by 35 percent from average landings recorded during 1999 to 2003 and, thereby, immediately end overfishing.

Establish a trip limit of 4,000 lb (1,814 kg) until 75 percent of the quota is taken and a trip limit of 300 lb (136 kg) after 75 percent of the quota is taken, provided that if 75 percent of the quota had not been taken on or before September 1, the trip limit would not be reduced. These measures would be expected to extend the fishery through the fishing year while still allowing fishermen to take the entire quota.

In the recreational fishery for golden tilefish, this proposed rule would limit possession to one per person per day within the 5–grouper per person per day aggregate recreational bag limit. This bag limit would be expected to provide an incentive to avoid golden tilefish, thus contributing to reduced mortality of this species.

*Vermilion Snapper*

In the commercial fishery for vermilion snapper, this proposed rule would:

Establish a fishing year quota of 1,100,000 lb (498,952 kg), gutted weight. This quota is equivalent to the average landings during 1999–2003, represents an 8–percent reduction of the average landings during 1999–2001, and closely approximates the commercial portion of the optimum yield. The quota would immediately end overfishing, prevent overfishing from occurring in the future, and eliminate the occasional spikes in landings.

In the recreational fishery for vermilion snapper, this proposed rule would increase the minimum size limit from 11 inches (27.9 cm), total length (TL), to 12 inches (30.5 cm), TL. This measure is intended to reduce the mortality rate of vermilion snapper taken in the recreational fishery and would aid in enforceability of the minimum size limit by making the limit the same as the existing limit in the commercial fishery. However, NMFS is concerned that the release mortality rates for vermilion snapper could be higher than previously estimated; therefore, it is possible a large proportion of discarded fish would die. Further, because larger vermilion snapper occur in deeper water, the adverse effect of discard mortality could be even more severe for the larger fish. NMFS is specifically inviting public comment on the proposed increase in the vermilion snapper size limit.

*Black Sea Bass*

In the commercial fishery for black sea bass, this proposed rule would:

Change the fishing year from the calendar year to June 1 through May 31, as of the effective date of the final rule that would implement Amendment 13C. Peak spawning for black sea bass occurs during March through May. If the commercial quota were reached and the fishery closed before the end of the new fishing year, fishing pressure on spawners would be reduced, thus contributing to recruitment success of the new year class.

Establish fishing year quotas of 477,000 lb (216,364 kg), gutted weight, for the fishing year that commences June 1, 2006; 423,000 lb (191,870 kg) for the fishing year that commences June 1, 2007; and 309,000 lb (140,160 kg) for the fishing year that commences June 1, 2008, and for subsequent fishing years. The ultimate quota of 309,000 lb (140,160 kg), gutted weight, represents a 35–percent reduction of the average commercial landings during 2001–2003 and would end overfishing during 2009.

Require the use of at least 2–inch (5.1–cm) mesh for the entire back panel, i.e., the side of the pot opposite the pot entrance, of a sea bass pot. To allow time for fishermen to comply with this gear change, this measure would become effective 6 months after the publication of the final rule that would implement Amendment 13C. This measure would significantly increase the ability of black sea bass that do not meet the minimum size limit to escape and, thus, would reduce the mortality of such trap-caught fish.

Require removal of sea bass pots from the water when the commercial quota has been taken. The Administrator, Southeast Region, NMFS, (RA) would be authorized, based on extenuating circumstances, to grant up to a 10-day grace period for the removal of traps after the commercial quota has been taken. In addition, a person may request that the RA grant such a grace period based on severe personal hardship, such as equipment failure or the vessel operator's health, by providing a letter outlining the nature and circumstances of the severe personal hardship to be received by the RA no later than the effective date of the closure. The RA would advise the requester of the approval or disapproval of the request. This measure requiring timely removal of sea bass pots would eliminate the mortality of black sea bass associated with the use of pots after the quota is taken.

In the recreational fishery for black sea bass, this proposed rule would:

Change the fishing year from the calendar year to June 1 through May 31, as of the effective date of the final rule that would implement Amendment 13C. This measure would provide a uniform fishing year for both the commercial and recreational fisheries.

Increase the minimum size limit from 10 inches (25.4 cm), TL, to 11 inches (27.9 cm), TL, through May 31, 2007, and to 12 inches (30.5 cm), TL, commencing June 1, 2007. The increased minimum size limits would allow a greater proportion of fish to spawn.

Reduce the daily bag limit from 20 to 15 per person per day. The decrease in bag limit would not initially reduce harvest as most fishermen are not catching the limit. However, a reduced bag limit would help to constrain harvest as the population rebuilds and the number of recreational fishermen increases.

The Council believes these measures would end overfishing for black sea bass in the recreational fishery as soon as practicable.

*Red Porgy*

In the commercial fishery for red porgy, this proposed rule would:

Establish a fishing year quota of 127,000 lb (57,606 kg), gutted weight, and change the May through December trip limit from 50 lb (22.7 kg) to 120 red porgy. (The January through April seasonal harvest limitations would remain unchanged.) These measures would be expected to increase the total

catch by 109 percent from average landings recorded from 1999 to 2003 while ensuring continued progress in the current rebuilding program.

In the recreational fishery for red porgy, this proposed rule would increase the daily bag limit from 1 to 3 red porgy per day and adjust the possession limit accordingly. This measure would be expected to allow an increase in the recreational catch while ensuring continued progress in the current rebuilding program.

*Measures Applicable to Snowy Grouper, Golden Tilefish, Vermilion Snapper, Black Sea Bass, and Red Porgy*

For all of these species, this proposed rule would:

Limit the harvest and possession of the applicable species to the recreational bag limit for the remainder of the fishing year after the applicable quota is taken. This measure would enhance enforceability of the regulations because, after a quota closure, the same limit would apply to both commercial and recreational fisheries.

Prohibit the purchase and sale of the applicable species for the remainder of the fishing year after the applicable quota is taken. This measure would enhance enforceability of the quota provisions.

**Additional Measures in Amendment 13C**

In addition to the measures discussed above, Amendment 13C would establish total allowable catches (TACs) for black sea bass comprised of commercial quotas and recreational allocations as follows (all weights are gutted weights):

| Fishing Year Commencing: | TAC | Commercial Quota | Recreational Allocation |
|---|---|---|---|
| June 1, 2006 | 1,110,000 lb (503,488 kg) | 477,000 lb (216,364 kg) | 633,000 lb (287,124 kg) |
| June 1, 2007 | 983,000 lb (445,882 kg) | 423,000 lb (191,870 kg) | 560,000 lb (254,012 kg) |
| June 1, 2008, and Subsequent Yrs. | 718,000 lb (325,679 kg) | 309,000 lb (140,160 kg) | 409,000 lb (185,519 kg) |

TAC and its components would be used by fishery managers in determining when overfishing is occurring.

**Availability of Amendment 13C**

Additional background and rationale for the measures discussed above are contained in Amendment 13C. The availability of Amendment 13C was announced in the **Federal Register** on May 18, 2006 (71 FR 28841). Written comments on Amendment 13C must be received by July 17, 2006. All comments received on Amendment 13C or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

**Classification**

At this time, NMFS has not determined that Amendment 13C, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment periods on Amendment 13C and this proposed rule.

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

The Council prepared an FEIS for Amendment 13C; a notice of availability was published on May 26, 2006 (71 FR 30399).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council office (see **ADDRESSES**). A summary of the analysis follows.

This proposed rule would reduce the commercial quotas and establish trip limits for snowy grouper and golden tilefish, establish commercial quotas for vermilion snapper and black sea bass, establish a back-panel mesh size requirement for black sea bass pots, change the fishing year for the commercial and recreational black sea bass fisheries, establish a commercial quota and increase the trip limit for red porgy, reduce the recreational bag limit for snowy grouper and golden tilefish, increase the recreational minimum size limits of vermilion snapper and black sea bass, and increase the recreational bag limit of red porgy. The purpose of the proposed rule is to end overfishing for snowy grouper, golden tilefish, vermilion snapper, and black sea bass, and allow for an increase in the harvest of red porgy consistent with the rebuilding schedule for this species. The Magnuson-Stevens Act provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. The proposed rule would not impose any reporting or recordkeeping requirements. However, sea bass pot fishermen who encounter personal hardship and are unable to meet the proposed pot removal requirements may request through application to the Regional Administrator, NMFS Southeast Region (RA), a grace period of up to 10 days. Completion of this application is not expected to require special skills, recordkeeping, or substantial allocation of time, which should not exceed 30 minutes. No fees or costs other than the time spent and postage are associated with this application.

Two general classes of small business entities would be directly affected by the proposed rule, commercial fishing vessels and for-hire fishing vessels (charterboats and headboats). The Small Business Administration defines a small entity in the commercial fishing sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual gross receipts not in excess of $3.5 million. For a for-hire business, the appropriate revenue benchmark is $6.0 million.

An analysis of the gross revenue per vessel for commercial vessels that harvest species addressed in this action was conducted using data from the NMFS Southeast logbook program. These vessels also operate in other federally permitted fisheries, some harvests of which are also reported in the Southeast logbook program. All harvests (snapper-grouper and non-snapper-grouper species) and associated gross revenues encompassed by the Southeast logbook program were summarized. During the period 2001 to 2004, average annual gross revenue per vessel did not exceed $14,000, and total annual gross revenue for an individual vessel did not exceed approximately $247,000. It should be noted that these vessels may also operate in the for-hire sector and other commercial fisheries

whose landings are not covered by the Southeast logbook. Thus, this analysis may underestimate the total gross revenue for some vessels, though any underestimation is not believed to be substantial.

A comprehensive study of vessels that participated in the South Atlantic snapper-grouper fishery in 1994 provided estimates of total vessel revenue from all fishing activities. Average net income (1994 dollars) from sampled boats, in declining order, was $83,224 for boats that primarily used bottom longlines in the northern area (St. Augustine, FL, northward); $23,075 for boats that primarily used black sea bass pots in the northern area, $15,563 for boats that primarily used bottom longlines in the southern area (south of St. Augustine, FL); $11,649 for boats that primarily used vertical lines in the southern area; and $8,307 for boats that primarily used vertical lines in the northern area. Overall, boats in the northern area averaged $14,143 in net income based on average revenues of $48,702, while boats in the southern area averaged $12,388 net income based on average revenues of $39,745.

Although some fleet activity may exist in the snapper-grouper fishery, the extent of such has not been determined. Thus, all vessels are assumed to be unique business entities. Given the gross revenue profile captured by 2001–2004 Southeast logbook program data and the findings of the 1994 survey, it is assumed that all vessels represent small business entities.

Charterboats are defined as boats for hire carrying 6 or fewer passengers that charge a fee to rent the entire boat. Headboats are for-hire vessels with a larger passenger capacity that charge a fee per individual angler. Using 1998 survey data, two methods were used to determine the average gross revenue per vessel for the for-hire sector. The first method summarized the survey response to total gross revenue provided by the vessel owner. The second method calculated gross revenue based on the survey response to the average price per trip/passenger and the average number of trips/passengers taken/carried per year. The second method consistently generated higher estimates of average gross revenues, suggesting either over-reporting of the individual data elements utilized in the calculated method or under-reporting of gross revenues. The analysis of the expected impacts of the proposed action, however, assumed the alternative estimation methods generated an acceptable range of the true average gross revenues for this sector. For the charterboat sector, these results (1998 dollars) are as follows: $51,000 to $69,268 for Florida Atlantic coast vessels; $60,135 to $73,365 for North Carolina vessels; $26,304 to $32,091 for South Carolina vessels; and $56,551 to $68,992 for Georgia vessels. For the headboat sector, the results are: $140,714 to $299,551 for Florida (east and west coast) vessels, and $123,000 to $261,990 for vessels in the other South Atlantic states. Similar to the commercial harvest sector, some fleet activity may exist within the for-hire sector. The magnitude and identity of such is unknown, however, and all vessels are assumed to represent unique business entities. Given the gross revenue profiles generated, it is assumed that all for-hire operations potentially affected by the proposed rule are small business entities.

During 2004, 1,066 commercial vessels were permitted to operate in the snapper-grouper fishery. Not all permitted vessels operate every year, and some vessels are believed to obtain permits for either speculative purposes or as insurance against further restriction in commercial fisheries. Nevertheless, the total number of permitted vessels is considered an upper bound on the potential universe of vessels in the snapper-grouper fishery. The lower bound is assumed to be the number of vessels active in 2003—906 vessels. Thus, the range of vessels assumed to potentially operate in the commercial snapper-grouper fishery is 906 to 1,066. A subset of these vessels harvest the five species addressed in this action. From 2001 through 2004, the number of vessels that harvested any of the species addressed in this action ranged from 396 to 459 and are assumed to be the universe of potentially affected entities in the commercial harvest sector. This represents 37 percent (396/1,066) to 51 percent (459/906) of the entire universe of entities potentially active in the snapper-grouper fishery. Thus, it is determined that a substantial number of small entities in the commercial harvest sector would be affected by the proposed measures.

For the for-hire sector, 1,594 snapper-grouper for-hire permits were issued to vessels in the southern Atlantic states in 2004. The for-hire fishery operates as an open access fishery, and not all permitted vessels are necessarily active in the fishery. Some vessel owners purchase open access permits as insurance for uncertainties in the fisheries in which they currently operate. A 1999 study of the Southeast for-hire industry estimated that a total of 1,080 charter vessels and 96 headboats supplied for-hire services in Florida (east and west coast) and the rest of the South Atlantic in 1997.

Data on the number of for-hire vessels that actually harvest the species addressed by this action are not available. However, harvest data for 1999–2003 indicate that most (70 percent) of the headboat harvest in the South Atlantic is comprised of snapper-grouper species, and approximately 36 percent of total snapper-grouper headboat harvest is comprised of the species addressed in this action. Therefore, it is assumed that all South Atlantic headboats harvest or target snapper-grouper species, and it is likely that a substantial number of headboats will be affected by measures in this proposed rule.

Data on the charter sector also imply that a substantial number of charterboat entities will be affected by the proposed rule. Based on 2003 data, snapper-grouper species are caught on 28 percent of all charter trips, while 14 percent of the charter sector's snapper-grouper harvest is comprised of species addressed by this action.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is, do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All vessel operations affected by the proposed action are considered small entities so the issue of disproportionality does not arise in the present case. However, among the entities in the commercial harvest sector, there is a high degree of diversity in terms of primary gear employed and level of engagement in the snapper-grouper fishery. The proposed snowy grouper and golden tilefish actions would have a proportionally higher negative short-term impact on vessels which employ longline gear or fish off south and central Florida. The proposed vermilion snapper quota would have a relatively larger negative impact on vessels that employ hook-and-line gear or fish off Georgia and Northeast Florida. The proposed black sea bass management measures would have a proportionally higher negative impact on vessels that utilize black sea bass pots in North Carolina. Although the proposed red porgy management measures would increase the allowable harvest and revenues in the commercial fishery, most of the increase in revenue would be realized by vessels that employ hook-and-line gear.

The short-term impacts on the for-hire sector from the proposed measures for snowy grouper and golden tilefish are

expected to be minimal. In contrast, for-hire vessels would bear substantially larger short-term negative impacts associated with implementation of the proposed regulations for vermilion snapper and black sea bass. Assessment of the impacts on for-hire vessels is limited to expected reductions in harvest because the econometric models to predict changes in for-hire trips and subsequent changes in revenues as a result of the proposed regulations are not available. The short-term reduction in harvest of these two species is expected to be proportionally greater in the headboat sector than the charterboat or private boat sectors. For the vermilion snapper fishery, the proposed regulation would reduce vermilion snapper harvests by 21 percent in the private/charter sector compared to 30 percent in the headboat sector. Similarly, the proposed regulations for black sea bass are expected to reduce black sea bass harvests by 27 percent (year 1) in the charter/private sector compared to 41 percent (year 1) in the headboat sector.

The proposed red porgy regulation is expected to result in an increase in recreational harvest and associated benefits and is projected to increase red porgy harvest in the headboat sector by 36 percent and by 21 percent in the charter/private recreational fishery sector.

The profitability question is, do the regulations significantly reduce profit for a substantial number of small entities? In the recreational fishery, for-hire business entities would be expected to lose revenues and profits as a result of trip cancellation by clients who determine that the proposed measures will significantly affect the quality of the fishing experience. As previously discussed, these losses cannot be estimated at this time due to data limitations. However, it is reasonable to assume that the greater the reduction in harvest, the higher the likelihood of trip cancellation and potential revenue loss. Even though it is not possible to calculate the change in profitability expected to arise from the proposed rule, given the dependence of the for-hire sector on the harvest of vermilion snapper and black sea bass, it is reasonable to assume that the expected harvest reductions may result in a substantial adverse impact on the profitability of affected for-hire entities. The estimated reduction in consumer surplus for anglers that participate in the headboat sector (approximately $577,000) as a result of the proposed regulations in these two fisheries is approximately 19 percent of total estimated consumer surplus generated from the snapper-grouper fishery for this sector (approximately $2.978 million). Similar analysis is not possible for the charter sector because this sector was combined with the private recreational sector in the assessment results. Although it is inappropriate to translate these results one-for-one into expected trip cancellations, they demonstrate the potential magnitude of trip cancellation and potential business revenue and profit changes.

In the commercial harvest sector, data from 2001 through 2004 were used to examine the profitability of vessels that are likely to be affected by the proposed measures for black sea bass, vermilion snapper, golden tilefish, and snowy grouper. This analysis encompassed an average of 408 vessels per year. Because the analysis for red porgy was conducted using data during a different time period (1995 through 1998), the revenue increase associated with this measure was not included in the assessment of the short-term cumulative effects of the proposed rule. Instead, the estimated increase in net cash flow in the commercial harvest sector due to red porgy regulations is presented separately.

Net vessel revenues (gross revenue minus trip costs and opportunity cost of labor) were estimated from landings reported to the Southeast logbook program. Over the period 2001 to 2004, a large proportion (67 percent) of the entities included in this analysis earned less than $10,001 per year. Also, a number of vessels appeared to operate at a loss or break-even condition. These results could be an indication that a high proportion of the commercial fishermen in the Southeast are part-time fishermen who supplement their household income by other employment. Another explanation of the results is that not all of the fishing revenues for these vessels are reported in the Southeast logbooks and/or the vessels are engaged in for-hire activities. Revenues and costs associated with commercial fishing on trips that did not harvest any of the species covered by this proposed action, commercial fishing not captured by the Southeast logbook program, and for-hire activities are not reflected in the results contained in the following analyses. As such, total and net revenues for entire fishing business operations are unknown, and the following analysis likely overstates total and average individual impacts on the affected entities. The magnitude of this overstatement, however, cannot be determined.

During the first year of implementation, the proposed harvest restrictions for golden tilefish, snowy grouper, vermilion snapper, and black sea bass are expected to result in a total net short-term annual loss of $0.735 million to the commercial harvest sector, or 12 percent of the total net revenue for trips that harvested any of the affected species. The proposed rule would implement a stepped-down approach on harvest restrictions for snowy grouper and black sea bass over a 3-year period, and the cumulative effects of the proposed measures for these four species will increase to $1.085 million in the third year.

When evaluated at the individual vessel/entity level, the average annual loss per affected entity associated with the proposed rule in the first year is expected to vary between $760 and $3,261, and the maximum net loss per boat is expected to vary between $26,533 and $76,390 per year. In comparison, the preferred alternatives taken to public hearings would have resulted in an average annual loss between $1,863 and $5,659 and a maximum net loss per boat between $39,159 and $77,854 per year.

On average, 219 vessels (54 percent of potentially affected entities) would not be expected to incur losses under the proposed rule. In contrast, an average of 92 vessels (23 percent of potentially affected entities) would not have sustained net revenue losses if the preferred alternatives in the public hearing draft were implemented.

Revenue loss per vessel was classified as Range I ($1-$500), Range II ($501 to $10,000), or Range III (greater than $10,000). The short-term economic effects of the proposed action would not be distributed evenly across all affected entities. During the first year of implementation of the proposed rule, it is expected that 21 vessels would sustain Range III losses (an average of $22,764 per vessel) and collectively account for 62 percent of the total net loss in the commercial harvest sector. Conversely, 82 entities would sustain Range I losses ($102 per vessel), and 86 entities are expected to sustain Range II losses ($3,165 per vessel) and account for 37 percent of the total net loss in the commercial harvest sector.

Vessel profitability is expected to decrease by more than 10 percent for 86 vessels (21 percent of the 408 potentially affected entities) during the first year of implementation of this proposed rule. This compares to 140 vessels (34 percent of all 408 potentially affected entities) expected to experience a decrease in profitability of more than 10 percent under the preferred alternatives taken to public hearing.

The proposed rule is expected to result in a loss in net revenue of more

than 10 percent for the 20 vessels that experience a Range III reduction. Also, 80 percent of all affected entities (16 vessels) that experience a Range III decrease in net revenue are expected to realize more than a 25- percent reduction in profitability. In contrast, profitability is expected to decrease by more than 10 percent for only 24 percent (7 vessels) of all vessels that are likely to sustain Range I losses.

For red porgy, the proposed rule is expected to increase short-term revenue to the commercial harvest sector by $0.07 million annually. The estimated increase in earnings of 32 vessels (10 percent of the 317 vessels expected to be affected by the red porgy action) are expected to exceed $2,500 per vessel annually. The estimated average net revenue increase per vessel within the red porgy fishery is $221 ($70,000/317) per year.

In summary, the proposed rule is expected to result in a 12- percent loss in short-term net revenue to the commercial harvest sector. At least 26 percent of potentially affected entities are expected to sustain more than $501 losses in net revenue, and 31 percent of all affected entities (13 percent of all potentially affected entities) are expected to experience more than a 25-percent decrease in profitability during the first year of implementation of the proposed action. The reductions in profitability are expected to increase through the third year as total target harvest reductions are achieved. Thus, both the magnitude and distributional effects of the reduction in net revenues could increase over this period of time. However, the delayed implementation of the full harvest reductions could allow operational adaptation by the affected entities, resulting in smaller total impacts and smaller distributional effects than those discussed above. In addition to the impacts described for the commercial finfish harvest sector, certain segments of the for-hire sector are expected to experience substantial reductions in allowable harvests of certain species as a result of the proposed rule and may experience commensurate reductions in revenues if unable to maintain service demand through the substitution of other species.

Three alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the snowy grouper fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

The third alternative would have achieved the full commercial quota reduction in the first year of implementation, rather than the step-down provision of the proposed action and, as such, would result in greater short-term adverse economic impacts than the proposed action.

Three alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the snowy grouper fishery. The status quo would have allowed continued overfishing and would, therefore, not achieve the Council's objective.

Due to the low catch per unit effort in the recreational fishery, the third alternative would not have resulted in sufficient harvest reduction to achieve the goal of ending overfishing. Therefore, although this alternative would have resulted in lower short-term adverse economic impacts to the recreational sector, this alternative would not achieve the Council's objective.

Three alternatives, including the status quo and two quota alternatives, one of which was the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the golden tilefish fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

For each quota alternative, five step-down trip limit alternatives, including the status quo, and two step-down trigger date control options, including the status quo no control trigger date, were considered. Under the quota specified by the proposed action, the trip limit alternatives encompassed either a lower trip limit, 3,000 lb (1,361 kg), than the proposed action or a less restrictive harvest trigger, 85 percent of the quota, for the step down. The short-term adverse economic impacts of all trip limit alternative combinations that include the 75–percent harvest trigger would be expected to be approximately equal to or greater than those of the proposed action. The trip limit alternative combinations that include the 85–percent harvest trigger would generate lower short-term adverse economic impacts than the proposed action. However, this higher trigger would result in a shorter fishing season, on average, than the proposed action. Although these impacts were not able to be quantified, shorter fishing seasons are recognized to result in adverse price effects, market disruptions, and disruptions of business operation. Therefore, the expected longer season projected under the proposed action was determined to best meet the Council's objectives.

Under the alternative quota specification, the expected adverse short-term economic impacts of seven of the ten trip limit and trigger date combinations are projected to be less than those of the proposed action due to the 3-year progression to the target quota of 295,000 lb (133,810 kg), which is implemented in the third year under this alternative, resulting in larger allowable harvests the first 2 years. This alternative, however, would not end overfishing as soon as practicable and would therefore not meet the Council's objective.

Four alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the golden tilefish fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

Due to the low catch per unit effort in the recreational fishery, the third alternative would not have resulted in sufficient harvest reduction to achieve the goal of ending overfishing. Therefore, although this alternative would have resulted in lower short-term adverse economic impacts to the recreational sector, this alternative would not achieve the Council's objective.

The fourth alternative would impose greater restrictions on recreational golden tilefish harvest, resulting in greater adverse economic impacts than the proposed action.

Ten alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the vermilion snapper fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

Eight alternatives would have established lower commercial quotas (either 757,000 or 821,000 lb (343,369 or 372,399 kg) gutted weight) than the preferred alternative, in addition to alternative minimum size and trip limits. These quotas represent reductions in allowable harvest greater than is necessary to end overfishing of this resource. Further, each of the eight alternatives would result in greater

adverse economic impacts than the proposed action.

Nine alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the vermilion snapper fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

In addition to the minimum size limit increase of the proposed action, one alternative to the proposed action would reduce the daily bag limit to six fish. Although this alternative would increase the likelihood of ending overfishing relative to the proposed action, this alternative would result in greater adverse economic impacts than the proposed action.

A similar alternative would, in addition to the minimum size limit increase, impose lower, but differential, bag limits on the for-hire and recreational sectors. Similar to the alternative discussed above, although this alternative would increase the likelihood of ending overfishing relative to the proposed action, this alternative would result in greater adverse economic impacts than the proposed action.

Two alternatives to the proposed vermilion snapper recreational action would maintain the current minimum size limit but impose fishery closures for different periods: October through December and January through February. Both alternatives are projected to result in lower adverse economic impacts than the proposed action. However, these estimates do not incorporate additional potential adverse impacts associated with potential fishing trip cancellation as a result of the closures. These impacts cannot be determined at this time. The addition of these impacts to these alternatives, however, may result in greater total adverse impacts compared to the proposed action. Further, although the proposed action may not end overfishing, depending on the level of the current vermilion snapper biomass, these alternatives are not expected to achieve as much progress toward the goal of ending overfishing as the proposed action and, as such, do not meet the Council's objectives.

Two alternatives to the proposed recreational vermilion snapper action would retain the closures specified in the alternatives discussed above and add reductions in the bag limit to six fish and five fish, respectively. Although each of these alternatives would be expected to achieve greater progress toward ending overfishing relative to the proposed action, each would also result in greater adverse economic impacts than the proposed action.

The ninth and final alternative to the proposed recreational vermilion snapper action would include the minimum size limit increase in the proposed action and close the fishery from January through February. This alternative would achieve greater harvest reductions than the proposed action, thereby accomplishing more progress toward ending overfishing. This action would also, however, result in greater adverse economic impacts than the proposed action. The Council determined that, given the uncertainty associated with the stock assessment for vermilion snapper, the harvest reductions achieved by the proposed action, while not achieving an immediate end to overfishing, would be sufficient until further knowledge is gained through the next stock assessment.

Eight alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the commercial fishery consistent with ending overfishing in the black sea bass fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

The third alternative would have established a lower quota than that specified for the first 2 years under the proposed action, but 10 percent greater than the third year quota. Thus, this alternative would be expected to result in greater adverse economic impacts than the proposed action in the first 2 years, but slightly lesser impacts in subsequent years. Although the effects of such could not be quantified, the Council determined that a more gradual progression to a lower quota would support greater adaptive behavior by participants and result in lower total adverse economic impacts.

The fourth alternative would have established the lower third- year quota target of the proposed action immediately and also would have established an increased minimum size limit and trip limits. This alternative would result in greater adverse economic impacts than the proposed action.

The fifth alternative would have established a quota equal to that specified in the second year of the proposed action and an increased minimum size limit. This alternative would result in greater adverse economic impacts in the first 2 years than the proposed action, but less impacts thereafter. This alternative would not, however, achieve the necessary harvest reductions to meet the Council's objective to end overfishing.

The sixth alternative would add trip limits and an increase in the minimum size limit to the measures contained in the proposed action. Because this alternative would be more restrictive than the proposed action, this alternative would result in greater adverse economic impacts.

The seventh alternative would not impose a quota but would, instead, in addition to the mesh size specification of the proposed action, limit harvest and/or possession of black sea bass to the recreational bag limit. This alternative would result in greater adverse economic impacts than the proposed action.

The eighth and final alternative to the proposed action on the commercial black sea bass fishery would impose the mesh size specification of the proposed action and increase the minimum size limit. Although this alternative would result in less adverse economic impacts than the proposed action, this alternative would not achieve the necessary harvest reductions to meet the Council's objective of ending overfishing.

Eight alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures for the recreational fishery consistent with ending overfishing in the black sea bass fishery. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

The third alternative to the proposed action would immediately establish a lower allocation than the first 2 years of the proposed action, but greater than that of the third and subsequent years, as well as an immediate increase in the minimum size limit matching the specification in the second year of the proposed action. The bag limit specifications of both alternatives are identical. Since this alternative is more aggressive in achieving desired reductions, the short-term adverse impacts are greater than those of the proposed action. Further, the progressive achievement of the target restrictions in the proposed action allow for more gradual adaptation to the new restrictions and the changes to the business environment they may engender.

The fourth alternative to the proposed action would immediately establish the third year allocation of the proposed action, forgo the second increase in the

minimum size limit, and reduce the bag limit to four fish per person per day. Although the quantifiable adverse economic impacts of this alternative are lower than those of the proposed action, these impacts do not account for additional potential adverse impacts associated with trip cancellation due to the severe reduction (80 percent) in the daily bag limit. These additional adverse impacts are expected to result in this alternative having a greater adverse economic impact than the proposed action.

The fifth alternative would establish a recreational allocation equal to that of the second year under the proposed action and limit the increase in the minimum size limit to 1 inch (2.5 cm). Although this alternative would result in lower adverse economic impacts than the proposed action, the resultant harvest reductions would be insufficient to meet the Council's objective.

The sixth alternative would mimic the allocation specifications of the proposed action but would limit the minimum size limit increase to 1 inch (2.5 cm) while reducing the daily bag limit to four fish. Similar to the discussion of the second alternative above, the analytical results do not capture the full potential impacts associated with the bag limit reduction, and this alternative is expected to result in greater adverse economic impact than the proposed action.

The seventh alternative would simply reduce the bag limit to 10 fish per person per day. This alternative would not achieve the necessary harvest reductions to meet the Council's objective.

The eighth and final alternative to the proposed action for the recreational black sea bass fishery would simply increase the minimum size limit 1 inch (2.5 cm). This alternative would not achieve the necessary harvest reductions to meet the Council's objective.

Five alternatives, including the status quo and the preferred alternative, were considered for the proposed action to establish management measures to increase the allowable harvest in the recreational and commercial fisheries for red porgy. The status quo would allow continued overfishing and would, therefore, not achieve the Council's objective.

The third alternative would be identical to the proposed action except for allowing a smaller recreational bag limit. This alternative would result in lower economic benefits than the proposed action.

The fourth alternative similarly imposes the smaller recreational bag limit and reduces the number of fish that can be harvested per commercial trip relative to the proposed action, while allowing the limit to remain in effect year-round rather than just May through December. Although this alternative would result in slightly greater benefits to the commercial sector, the benefits to the recreational sector would be less than those of the proposed action, and the Council determined that overall the proposed action would be more effective in allowing increased benefits relative to the status quo while protecting against harvest overages.

The fifth and final alternative to the proposed action on the red porgy fishery would implement the commercial trip limits of the second alternative discussed above, while allowing the higher daily recreational bag limit of the proposed action. Although this alternative would result in the higher economic benefits associated with the more liberal increases for both harvest sectors, the Council determined that the more conservative harvest potential associated with the commercial trip limits of the proposed action would be more effective in insuring that harvest overages do not occur.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA)—namely, a person requesting an exemption (i.e., a grace period) to the requirement for sea bass pot removal would be required to submit a letter of request to the RA. This requirement has been submitted to OMB for approval. The public reporting burden per response for this collection of information is estimated to average 10 minutes. This estimate of the public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**), and e-mail to *David__Rostker@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 5, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.30, paragraph (e) is added to read as follows:

**§ 622.30 Fishing years.**

* * * * *

(e) *South Atlantic black sea bass*—June 1 through May 31.

3. In § 622.36, paragraph (b)(5) is revised to read as follows:

**§ 622.36 Atlantic EEZ seasonal and/or area closures.**

* * * * *

(b) * * *

(5) *Red porgy.* During January, February, March, and April, the harvest or possession of red porgy in or from the South Atlantic EEZ is limited to three per person per day or three per person per trip, whichever is more restrictive. In addition, this limitation is applicable in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued without regard to where such red porgy were harvested. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

4. In § 622.37, paragraphs (e)(1)(ii) and (e)(3)(i) are revised to read as follows:

**§ 622.37 Size limits.**

* * * * *

(e) * * *

(1) * * *

(ii) Vermilion snapper—12 inches (30.5 cm), TL.

* * * * *

(3) * * *

(i) Black sea bass. (A) For a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(vii):

(*1*) Through May 31, 2007—11 inches (27.9 cm), TL; and

(*2*) On and after June 1, 2007—12 inches (30.5 cm), TL.

(B) For a fish taken by a person not subject to the bag limit in § 622.39(d)(1)—10 inches (25.4 cm), TL.

* * * * *

5. In § 622.39, paragraphs (d)(1)(ii), (d)(1)(vi), (d)(1)(vii), and (d)(2)(ii) are revised to read as follows:

**§ 622.39 Bag and possession limits.**

* * * * *

(d) * * *

(1) * * *

(ii) Groupers and tilefish, combined—5. However, within the 5–fish aggregate bag limit:

(A) No more than two fish may be gag or black grouper, combined;

(B) No more than one fish may be a snowy grouper;

(C) No more than one fish may be a golden tilefish; and

(D) No goliath grouper or Nassau grouper may be retained.

* * * * *

(vi) Red porgy—3.

(vii) Black sea bass—15.

* * * * *

(2) * * *

(ii) A person aboard a vessel may not possess red porgy in or from the EEZ in excess of three per day or three per trip, whichever is more restrictive.

* * * * *

6. In § 622.40, paragraphs (c)(3)(i) and (d)(2) are revised to read as follows:

**§ 622.40 Limitations on traps and pots.**

* * * * *

(c) * * *

(3) * * *

(i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) For sides of the pot other than the back panel:

(*1*) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(*2*) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(*3*) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(B) For the entire back panel, i.e., the side of the pot opposite the side that contains the pot entrance, mesh that is at least 2 inches (5.1 cm) between sides.

* * * * *

(d) * * *

(2) *South Atlantic EEZ*—(i) *Sea bass pots.* (A) In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a ''trawl'' or trot line.

(B) A sea bass pot must be removed from the water in the South Atlantic EEZ when the quota specified in § 622.42(e)(5) is reached. The RA may authorize a grace period of up to 10 days for removal of pots after a closure is in effect based on exigent circumstances which include, but are not limited to, insufficient advance notice of a closure or severe weather. In addition, a person may request that the RA grant such a grace period based on severe personal hardship, such as equipment failure or the vessel operator's health, by providing a letter outlining the nature and circumstances of the severe personal hardship to be received by the RA no later than the effective date of the closure. The RA will advise the requester of the approval or disapproval of the request. After a closure is in effect, a black sea bass may not be retained by a vessel that has a sea bass pot on board.

(ii) *Golden crab traps.* Rope is the only material allowed to be used for a buoy line or mainline attached to a golden crab trap.

7. In § 622.42, paragraph (e) is revised to read as follows:

**§ 622.42 Quotas.**

* * * * *

(e) *South Atlantic snapper-grouper, excluding wreckfish.* The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.) The quotas are in gutted weight, that is, eviscerated but otherwise whole.

(1) *Snowy grouper.* (i) For the fishing year that commences January 1, 2006—151,000 lb (68,492 kg).

(ii) For the fishing year that commences January 1, 2007—118,000 lb (53,524 kg).

(iii) For the fishing year that commences January 1, 2008, and for subsequent fishing years—84,000 lb (38,102 kg).

(2) *Golden tilefish*—295,000 lb (133,810 kg).

(3) *Greater amberjack*—1,169,931 lb (530,672 kg).

(4) *Vermilion snapper*—1,100,000 lb (498,952 kg).

(5) *Black sea bass.* (i) For the fishing year that commences June 1, 2006—477,000 lb (216,364 kg).

(ii) For the fishing year that commences June 1, 2007—423,000 lb (191,870 kg).

(iii) For the fishing year that commences June 1, 2008, and for subsequent fishing years—309,000 lb (140,160 kg).

(6) *Red porgy*—127,000 lb (57,606 kg).

* * * * *

8. In § 622.43, paragraphs (a)(5) and (b)(1) are revised to read as follows:

**§ 622.43 Closures.**

(a) * * *

(5) *South Atlantic greater amberjack, snowy grouper, golden tilefish, vermilion snapper, black sea bass, and red porgy.* The appropriate bag limits specified in § 622.39(d)(1) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of the applicable species in or from the South Atlantic EEZ, and the sale or purchase of the applicable species taken from the EEZ is prohibited. In addition, the bag and possession limits for the applicable species and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested.

* * * * *

(b) * * *

(1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, or specified snapper-grouper species in paragraphs (a)(1), (a)(3)(iii), (a)(4), or (a)(5) and (a)(6), respectively, of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

* * * * *

9. In § 622.44, paragraphs (c)(2), (c)(3), (c)(4), and (c)(5) are revised to read as follows:

**§ 622.44 Commercial trip limits.**

* * * * *

(c) * * *

* * * * *

(2) *Golden tilefish.* (i) Until 75 percent of the fishing year quota specified in § 622.42(e)(2) is reached—4,000 lb (1,814 kg).

(ii) After 75 percent of the fishing year quota specified in § 622.42(e)(2) is

reached—300 lb (136 kg). However, if 75 percent of the fishing year quota has not been taken on or before September 1, the trip limit will not be reduced. The Assistant Administrator, by filing a notification of trip limit change with the Office of the **Federal Register**, will effect a trip limit change specified in this paragraph when the applicable conditions have been taken.

(iii) See § 622.43(a)(5) for the limitations regarding golden tilefish after the fishing year quota is reached.

(3) *Snowy grouper.* (i) During the 2006 fishing year, until the quota specified in § 622.42(e)(1)(i) is reached—275 lb (125 kg).

(ii) During the 2007 fishing year, until the quota specified in § 622.42(e)(1)(ii) is reached—175 lb (79 kg).

(iii) During the 2008 and subsequent fishing years, until the quota specified in § 622.42(e)(1)(iii) is reached—100 lb (45 kg).

(iv) See § 622.43(a)(5) for the limitations regarding snowy grouper after the fishing year quota is reached.

(4) *Red porgy.* (i) From May 1 through December 31—120 fish.

(ii) From January 1 through April 30, the seasonal harvest limit specified in § 622.36(b)(5) applies.

(iii) See § 622.43(a)(5) for the limitations regarding red porgy after the fishing year quota is reached.

(5) *Greater amberjack.* Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg). See § 622.43(a)(5) for the limitations regarding greater amberjack after the fishing year quota is reached.

* * * * *

10. In § 622.45, paragraph (d)(8) is added to read as follows:

**§ 622.45 Restrictions on sale/purchase.**

* * * * *

(d) * * *

(8) No person may sell or purchase a snowy grouper, golden tilefish, greater amberjack, vermilion snapper, black sea bass, or red porgy harvested from or possessed in the South Atlantic by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued for the remainder of the fishing year after the applicable commercial quota for that species specified in § 622.42(e) has been reached. The prohibition on sale/purchase during these periods does not apply to such of the applicable species that were harvested, landed ashore, and sold prior to the applicable commercial quota being reached and were held in cold storage by a dealer or processor.

* * * * *

[FR Doc. E6–9028 Filed 6–8–06; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[I.D. 060606A]**

**RIN 0648–AU12**

## Fisheries Off West Coast States; Notice of Availability of Amendment 18 to the Pacific Coast Groundfish Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 18 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 18 would modify the FMP to implement a bycatch minimization program for the Pacific coast groundfish fisheries. Amendment 18 is intended to respond to court orders in to establish a bycatch minimization program in the FMP.

**DATES:** Comments on Amendment 18 must be received on or before August 8, 2006.

**ADDRESSES:** You may submit comments, identified by I.D number 060606A by any of the following methods:

- E-mail: *Amendment18.nwr@noaa.gov*. Include the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Yvonne deReynier.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Yvonne deReynier, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6129; fax: 206–526–6736; and e-mail: *yvonne.dereynier@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** *Electronic Access:* This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve Amendment 18 to the FMP.

Amendment 18 would modify the FMP to implement a bycatch minimization program. Over the past several years, the Council and NMFS have managed the groundfish fisheries with a broad suite of bycatch minimization policies that would be formally organized and brought into the FMP through Amendment 18. This FMP amendment would also set the Council's future plans for bycatch minimization programs into the FMP to provide comprehensive direction for its current and future bycatch minimization efforts in Pacific Coast groundfish fishery management. Amendment 18 is intended to respond to court orders in *Pacific Marine Conservation Council* v. *Evans*, 200 F.Supp.2d 1194 (N.D. Calif. 2002) to establish a bycatch minimization program in the FMP. NMFS has previously complied with the court's orders from this same case under Amendment 16-1 to the FMP, in which it established a standardized bycatch reporting methodology as a required element of the FMP. Regulations to implement Amendment 18 would, among other measures: require species co-occurrence ratios to be used in setting trip limits and other management measures; authorize the use of area closures as routine management measures to protect all species, not just overfished species; and, require vessels that participate in open access groundfish fisheries to carry observers when directed by NMFS.

NMFS welcomes comments on the proposed FMP amendment through the end of the comment period. A proposed rule to implement Amendment 18 has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on proposed regulations to implement Amendment 18 in the near future. Public comments on the proposed rule

must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 6, 2006.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E6–9027 Filed 6–8–06; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 71, No. 111
Friday, June 9, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 5, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**National Agriculture Statistics Service**

*Title:* Distillers' Grains Survey.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* The National Agricultural Statistics Service (NASS) primary function is to prepare and issue official State and national estimates of crop and livestock production, disposition and prices. NASS has entered into an agreement with an agency of the State of Nebraska, the Nebraska Corn Development's Utilization and Marketing Board, to conduct a survey to measure livestock producers' use of distillers' grains, which are nutritional by-products of ethyl alcohol (ethanol) production. These distillers' grains contain valuable protein, fiber, vitamins, and minerals and can replace corn and protein in livestock rations. The Nebraska Corn Board, supported by State and national commodity and livestock organizations, proposes to establish a baseline measure of the current usage of distillers' grains and identify any barriers hindering livestock producers from utilizing distillers' grains and other ethanol by-products in their rations.

*Need and Use of the Information:* The information collected from the survey will benefit livestock producers, feed manufacturers, and corn producers as well as ethanol producers. The survey will determine whether and how the different types of livestock producers are utilizing distillers' grains and will identify usage patterns and preferences and lead to more efficient marketing and orderly growth. It will promote the use of by-products that are now disposed of instead of utilized as well as provide stability to this sector of the energy industry.

*Description of Respondents:* Farms.

*Number of Respondents:* 9,400.

*Frequency of Responses:* Reporting: One-time.

*Total Burden Hours:* 2,151.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–8970 Filed 6–8–06; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 5, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Agricultural Marketing Service**

*Title:* Customer Service Survey (Meat Grading and Certification Services)

*OMB Control Number:* 0581–0193.

*Summary of Collection:* The Agricultural Marketing Act of 19946 authorizes the Secretary of Agriculture

to provide consumers with voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. These services are provided under the authority of 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards). The customer service survey is used to gather information from its customers to determine the quality of service provided. Once an applicant request services, there is no way to determine the quality of service that is provided.

*Need and Use of the Information:* Agricultural Marketing Service will collect information to evaluate services and assist in planning and managing the program. The information from the survey is strictly voluntary and will be used to continually improve the services.

*Description of Respondents:* Business or other-for-profit.

*Number of Respondents:* 12.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1.

**Agricultural Marketing Service**

*Title:* Farmers Market Promotion Program (FMPP).

*OMB Control Number:* 0581–0235.

*Summary of Collection:* The purposes of the Farmers Market Promotion Program (FMPP) are to increase domestic consumption of agricultural commodities by improving and expanding, assisting in the improvement and expansion, and to develop or aid in the development of new domestic farmers' markets, roadside stands, community-supported agriculture programs, and other direct producer-to-consumer infrastructure. The Farmer-to-Consumer Marketing Act of 1976 (Act) directs USDA to encourage the direct marketing of agricultural commodities from farmers to consumers, and to promote the development and expansion of direct marketing of agricultural commodities from farmers to consumers. The recently authorized Farmer's Market Promotion Program (FMPP) (7 U.S.C. 3005), section 6 of 7 U.S.C. 3004 directs the Secretary of Agriculture to ''carry out a program to make grants to eligible entities for projects to establish, expand, and promote farmers' markets.''

*Need and Use of the Information:* Grant application information will establish eligibility, requirements, review and approval process and grant administration procedures for the FMPP.

*Description of Respondents:* State, Local or Tribal Government.

*Number of Respondents:* 415.

*Frequency of Responses:* Reporting: One time.

*Total Burden Hours:* 3,208.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–8971 Filed 6–8–06; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 6, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Rural Utilities Service**

*Title:* 7 CFR Part 1717 Subpart D, Mergers and Consolidations of Electric Borrowers.

*OMB Control Number:* 0572–0114.

*Summary of Collection:* The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, water and waste and water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended and as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-tax Receivable, states that agencies must base on a review of a loan application determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

*Need and Use of the Information:* RUS will collect information to streamline procedures and allow borrowers the flexibility to meet new business challenges and opportunities. The information is necessary for RUS to conduct business with successor entity while protecting the security of Government loans and avoiding defaults and to grant merger approval when required.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 12.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 170.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E6–8984 Filed 6–8–06; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[FDMS Docket No. FSIS–2006–0004]**

### International Standard-Setting Activities

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

• **SUMMARY:** This is an attachment that was inadvertently left out of the notice that published on June 6, 2006. (71 FR 32504). For the readers convenience this goes with Attachment 1.

**FOR FURTHER INFORMATION CONTACT:** F. Edward Scarbrough, PhD, United States Manager for Codex, U.S. Department of Agriculture, Office of the Under Secretary for Food Safety, Room 4861,

South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 to this notice.)

Done in Washington, DC: June 6, 2006.

**Mary Ann Riley,**

*FSIS, Liaison Officer.*

**Codex Committee on Food Additives and Contaminants**

The Codex Committee on Food Additives and Contaminants (CCFAC) (a) establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed; (b) prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); (c) recommends specifications of identity and purity for food additives for adoption by the Commission; (d) considers methods of analysis for food additive and contaminants; and (e) considers and elaborates standards and codes for related subjects such as labeling of food additives when sold as such and food irradiation. The following matters are under consideration by the Commission at its 29th Session in July 2006. The relevant document is ALINORM 6/29/12.

• Revised Terms of Reference on the Codex Committee on Food Additives and Contaminants.

**Food Additives**

To be considered at Step 8:

• General Standard for Food Additives (GSFA): Draft Food Additive Provisions in Tables 1 and 2.

• Draft Revised Preamble to the GSFA.

To be considered at Step 5/8:

• General Standard for Food Additives: Proposed Draft Food Additive Provisions in Tables 1, 2 and 3.

• Advisory Specifications for the Identity and Purity of Food Additives.

• Proposed Draft Revisions to the Codex International Numbering System for Food Additives.

To be considered for Revocation and Discontinuation of work:

• Proposed Draft and Draft Food Additive Provisions in the GSFA.

To be considered for New Work:

• Guidelines for the use of flavoring agents.

The Committee is continuing work on:

• General Standard for Food Additives: Draft Food. Additive Provisions (in Tables 1, 2, and 3)

• International Numbering System.

• Specifications for the Identity and Purity of Food Additives.

• Inventory of Processing Aids.

**Contaminants**

To be consideredat Step 8:

• Maximum Level for Lead of 0.3 mg/kg in Fish.

• Maximum Levels for Cadmium in polished rice of 0.4 mg/kg, and in marine bivalve mollusks (excluding oysters and scallops) and in cephalopods (without viscera) of 2 mg/kg.

To be consideredat Step 5/8:

• Proposed Amendment to the Preamble of the Codex General Standard for Contaminants and Toxins in Foods (GSCTF).

• Proposed Draft Appendix to the Codex Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Tree Nuts to address additional measures for the prevention and reduction of aflatoxin in Brazil nuts.

• Proposed Draft Code of Practice for the Prevention and Reduction of Dioxin and Dioxin-like PCB Contamination in Foods and Feeds.

• Proposed Draft Guidelines Levels for Radionuclides in Foods Contaminated Following a Nuclear or Radiological Emergency for Use in International Trade.

To be consideredat Step 5:

• Proposed Draft Maximum Level for Aflatoxin in ready-to-eat almonds, hazelnuts and pistachios.

• Proposed Draft Maximum Levels for Tin of 250 mg/kg in canned foods other than beverages, and 150 mg/kg in canned beverages.

To be consideredfor New Work:

• To revise the Preamble of the GSCTF to remove the procedural provisions; to include them in the Procedural Manual; to amend the complementary food categorization system for the GCSFT; to align the language of the Preamble with the definitions contained in the Procedural Manual; to update the provision in the Procedural Manual regarding toxins.

• Elaboration of a Code of Practice for the Reduction of Acrylamide in Food.

• Elaboration of a Code of Practice for the Reduction of Polycyclic Aromatic Hydrocarbons in Food.

• Elaboration of a Code of Practice for the Prevention and Control of Ochratoxin A Contamination in Wine.

The Committee is continuing work on:

• Maximum levels for aflatoxin in almonds, hazelnuts, and pistachios for further processing.

• Discussion Paper of Aflatoxin Contamination in Brazil Nuts.

• Proposed draft sampling plan for Aflatoxin Contamination in Almonds, Brazil nuts, Hazelnuts and Pistachios.

• Discussion paper on Deoxynivalenol (DON).

• Discussion paper on Ochratoxin A Contamination in Coffee.

• Discussion paper on Ochratoxin A Contamination in Cocoa.

• Proposed Draft maximum levels for 3-monochloropropanediol (3–MCPD) in liquid condiment containing HVPs.

• Proposed Draft Code of Practice for the Reduction of Chloropropanols during the Production of Acid Hydrolized Vegetable Protein (HVP) and Products that Contain Acid HVP.

• Discussion paper on Methylmercury in Fish.

• Discussion paper on Aflatoxins in Dried Figs.

**General Issues**

• Priority List of Food Additives, Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JECFA.

*Responsible Agency:* HHS/FDA.

*U.S. Participation:* Yes.

[FR Doc. E6–9050 Filed 6–8–06; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siskiyou County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California, June 19, 2006. The meeting will include routine business, and two presentations from the Salmon River Restoration Council and the Siskiyou Fire Safe Council on previously funded RAC grants.

**DATES:** The meeting will be held June 19, 2006, from 4 p.m. until 6 p.m.

**ADDRESSES:** The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

**FOR FURTHER INFORMATION CONTACT:** Lorenda Cianci, Grants & Agreements Specialist, Klamath National Forest, (530) 841–4402 or electronically at *lcianci@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Public

comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 5, 2006.

**Margaret J. Boland,**

*Designated Federal Official.*

[FR Doc. 06–5243 Filed 6–8–06; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Matanuska River Terrace Erosion Area Acquisition Pilot Project

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, Robert Jones, State Conservationist, finds that neither the proposed action nor any of the alternatives is a major Federal action significantly affecting the quality of the human environment, and determine that an environmental impact statement is not needed for the Matanuska River Terrace Erosion Area Acquisition Pilot Project.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Jones, State Conservationist, Natural Resources Conservation Service, Alaska State Office, 800 West Evergreen Avenue, Suite 100, Palmer, AK 99645–6539; Phone: 907–761–7760; Fax: 907–761–7790.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, the preparation and review of an environmental impact statement are not needed for this project.

The proposed action is for the Matanuska-Susitna Borough (MSB) to acquire fee simple title to eligible selected properties (~3–4) within the project areas described located near the communities of Sutton and Palmer, AK. Participation by the landowner is strictly voluntary. All real property acquisition will be made at appraised fair market value in accordance with the Federal Acquisition Regulations. Applications for assistance will be ranked in accordance with the criteria agreed upon by the MSB and the Natural Resources Conservation Service (NRCS). The highest ranked property, as determined by NRCS, will be acquired first according to criteria parameters. Acquisitions will be limited to available Federal funding ($594,000). All property acquired under this project will have the structures demolished and/or removed; wells, septic systems, and underground storage tanks decommissioned or removed as required by State law; and the site restored to support natural terrace and riparian values and functions, in perpetuity. A Cooperative Agreement between MSB and NRCS will be reached that defines the roles and responsibilities of each organization for pre- and post implementation. Covenant Stipulations will be placed on each acquired property designating allowable land use and management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and other interested parties. A limited number of copies of the Environmental Assessment and the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert Jones.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: June 1, 2006.

**Robert Jones,**

*State Conservationist.*

[FR Doc. E6–9002 Filed 6–8–06; 8:45 am]

**BILLING CODE 3410–16–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

*Comments Must be Received on or Before:* July 9, 2006.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

**End of Certification**

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Products*

*Product/NSNS:* SKILCRAFT Spritz n' Mop, M.R. 1097—Refill, M.R. 1087—SKILCRAFT Spritz n' Mop.

*NPA:* Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
*Contracting Activity:* Defense Commissary Agency (DeCA), Fort Lee, Virginia.

*Services*

*Service Type/Location:* Custodial Services, Denver Federal Center, Buildings 41, 44, and 48, Denver, Colorado.
*NPA:* Aspen Diversified Industries, Inc., Colorado Springs, Colorado.
*Contracting Activity:* GSA, PBS Region 8, Denver, Colorado.
*Service Type/Location:* Custodial Services, GSA, Federal Courthouse, 1101 Court Street, Lynchburg, Virginia.
*NPA:* Goodwill Industries of the Valleys, Inc., Roanoke, Virginia.
*Contracting Activity:* GSA, PBS, Region 3 (3PMT), Philadelphia, Pennsylvania.
*Service Type/Location:* Grounds/Custodial/Security Services, Lake Okeechobee and Outlying Areas, Army Corps of Engineers, Lake Okeechobee, Florida.
*NPA:* Gulfstream Goodwill Industries, Inc., West Palm Beach, Florida.
*Contracting Activity:* U.S. Army Corps of Engineers, Jacksonville, Florida.
*Service Type/Location:* Laundry Service At the following locations: DiLorenzo Army Health Clinic, Pentagon, Arlington, Virginia, Kimbrough Ambulatory Care Center, Fort Meade, Maryland, Malcolm Grow Medical Center, Andrews AFB, Maryland. National Naval Medical Center, Naval Surface Warfare Center, Bethesda, Maryland. Naval Health Clinic, Patuxent River Naval Station, Patuxent River, Maryland. Walter Reed Army Medical Center, 6900 Georgia Avenue, NW., Washington, DC.
*NPA:* Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.
*Contracting Activity:* North Atlantic Contracting Office, Washington, DC.
*Service Type/Location:* Warehousing, National Institute of Environmental Health Science, Research Triangle Park, Durham, North Carolina.
*NPA:* Employment Source, Inc., Fayetteville, North Carolina.
*Contracting Activity:* National Institute of Environmental Health Science, Durham, North Carolina.

**Deletions**

**Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

**End of Certification**

The following products are proposed for deletion from the Procurement List:

*Products*

*Product/NSNs:* Shampoo, Coal Tar, 6505–00–997–8531—Shampoo, Coal Tar, Shampoo, Medicated, 6505–01–326–0175—Shampoo, Medicated, 6505–00–116–1362—Shampoo, Medicated.
*NPA:* NYSARC, Inc., Seneca-Cayuga Counties Chapter, Waterloo, New York.
*Contracting Activity:* Veterans Affairs National Acquisition Center, Hines, Illinois.
*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

**Patrick Rowe,**

*Deputy Executive Director.*

[FR Doc. E6–8978 Filed 6–8–06; 8:45 am]

**BILLING CODE 6353–01–P**

## BROADCASTING BOARD OF GOVERNORS

### Notice of Meeting; Sunshine Act

**DATE AND TIME:** Tuesday, June 12, 2006, 2–3 p.m.

**PLACE:** RFE/RL Broadcast Center, Room 546, Prague, Czech Republic.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

**FOR FURTHER INFORMATION CONTACT:** Persons interested in obtaining more information should contact Carol Booker at (202) 203–4545.

Dated: June 6, 2006.

**Carol Booker,**

*Legal Counsel.*

[FR Doc. 06–5299 Filed 6–7–06; 12:37 pm]

**BILLING CODE 8320–01–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–803]**

### Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Extension of Time Limit for the Final Results of the 14th Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bankhead, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–9068.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 8, 2006, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, covering the period February 1, 2004, through January 31, 2005. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 11580 (March 8, 2006).

**Extension of Time Limit for Final Results**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the antidumping duty order. The Act further provides that the Department shall issue the final results of a review within 120 days after the date on which the notice of the

preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

The Department determines that the completion of the final results of this review within the statutory time period is not practicable. The Department requires additional time to analyze comments regarding the four companies involved in the instant review, each of which exported subject merchandise in at least one of the four classes or kinds of merchandise covered by this order, along with complex affiliation and agent sale issues. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of this review by 25 days until July 31, 2006.

Dated: June 2, 3006.

**Stephen J. Claeys,**

*Deputy Assistant Secretaryfor Import Administration.*

[FR Doc. E6–9006 Filed 6–8–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–489–806]**

### Certain Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Turkey for the period January 1, 2004, through December 31, 2004. We have preliminarily determined that Gidasa Sabanci Gida Sanayi ve Ticaret A.S. did not receive countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to liquidate without regard to countervailing duties, as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results (*see* the ''Public Comment'' section of this notice).

**EFFECTIVE DATE:** June 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander or Audrey Twyman, 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) 482–0182 and (202) 482–3534, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 24, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** the countervailing duty order on certain pasta from Turkey. *See Notice of Countervailing Duty Order: Certain Pasta from Turkey*, 61 FR 38546 (July 24, 1996). On July 1, 2005, the Department published in the **Federal Register**, a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005). We received one request for review on July 29, 2005, and initiated the review for calendar year 2004, on August 29, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). In accordance with 19 CFR 351.213(b), this review of the order covers Gidasa Sabanci Gida Sanayi ve Ticaret A.S. (''Gidasa'').

On September 8, 2005, we issued countervailing duty questionnaires to the Government of Turkey and Gidasa. We received responses to our questionnaires on November 14 and 17, 2005, and issued supplemental questionnaires on January 31, 2006. Responses to the supplemental questionnaires were received on February 23, and March 17, 2006.

On March 14, 2006, the Department postponed the preliminary results of review until June 5, 2006. *See Certain Pasta from Turkey: Extension of Time Limit for Preliminary Results of the Countervailing Duty Administrative Review*, 71 FR 13966 (March 20, 2006).

On April 5, 2006, we provided Gidasa an opportunity to place information on the record concerning the world market price for durum wheat, and international freight rates. We received Gidasa's submission on April 17, 2006.

#### Scope of Order

Covered by the order are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this order is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white.

The merchandise under review is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

#### Scope Ruling

To date, the Department has issued the following scope ruling:

On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. *See* Memorandum from John Brinkman to Richard Moreland, dated May 24, 1999, which is on file in the Central Records Unit (''CRU'') in Room B–099 of the main Commerce building.

#### Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1, 2004, through December 31, 2004.

#### Analysis of Programs

I. Programs Preliminarily Determined To Not Provide a Countervailable Benefit

*1. Purchases of Domestic Wheat from the Turkish Grain Board (''TMO'') under Decree 2003/5468*

There are three main ways for Turkish pasta producers to obtain wheat for semolina pasta: (1) from the TMO, (2) from local growers and traders, or (3) through imports. Prices for wheat in Turkey are set above world market prices as part of a price support scheme benefitting domestic wheat growers. However, companies holding an Inward Processing License can obtain lower

priced wheat (when compared to the equivalent domestic–priced wheat) by purchasing Turkish wheat from the TMO under Decree 2003/5468, and using the wheat to produce products for export. The Government of Turkey and Gidasa have stated that the price of wheat purchased under Decree 2003/5468 is at or above the world market price, as measured by the price from international tender auctions held by the TMO to sell Turkish wheat to foreign buyers. To purchase wheat, companies using Inward Processing Licenses must consume the wheat in the production of pasta for export only.

Under this program, the Government of Turkey provides a financial contribution per section 771(5)(D)(iii) of the Tariff Act of 1930, as amended (''the Act''), by providing a good (durum wheat). This program is specific per section 771(5A)(B) of the Act because it is contingent upon export performance. A benefit exists to the extent that the wheat is being provided on more favorable terms than the terms applicable to the provision of like or directly competitive products for use in the production of goods for domestic consumption, unless such terms or conditions are not more favorable than those commercially available on world markets to exporters. The world market price must be inclusive of delivery charges. 19 CFR 351.516(a)(1) and (2).

In response to our request for information, Gidasa provided arguments concerning world market prices and delivery charges for purposes of determining whether a benefit exists under this program. Concerning delivery charges, Gidasa argues that the Department should use a freight rate that closely resembles the actual freight paid on imports of durum wheat into Turkey. In this regard, the Government of Turkey provided import data showing that imports of durum wheat into Turkey during the POR came only from European Union countries. Therefore, Gidasa argues, the delivery charge should reflect freight from countries in close proximity to Turkey. Gidasa could not find publicly available freight rates from countries near Turkey. Instead, Gidasa provided U.S. import statistics for durum wheat. These statistics show international freight for shipments of durum wheat from Canada to the United States.

Concerning the world market price of durum wheat, the Government of Turkey has reported details on the single auction sale that it made in 2004 to an international purchaser. This sale could also be considered to provide a world market price because we are satisfied that it was an open and fair auction. However, Gidasa has argued that the wheat sold at this auction was durum grade 1, whereas the wheat it purchased under Decree 2003/5468 was durum grades 2 and 3. The quality differences between the grade 1 durum sold internationally and the grades purchased by Gidasa makes a simple unadjusted price comparison inappropriate, according to Gidasa.

Gidasa points instead to U.S. import statistics as providing the most specific world market prices of durum wheat. In particular, only U.S. import statistics distinguish between grades 1 and 2 durum wheat. Therefore, Gidasa argues that the Department should compare the prices Gidasa paid for grades 2 and 3 durum wheat, to the average 2004 import price of durum grade 2 wheat (HTSUS subheading 1001.10.00.96) from the U.S. import statistics.

For these preliminary results, we agree with Gidasa that the delivery charges should reflect the specific characteristics of the Turkish trade in durum wheat. Like Gidasa, we have been unable to find publicly available freight rates for durum wheat shipments to Turkey from nearby countries and, therefore, we preliminarily used the delivery charges from Canada to the United States.

Regarding the selection of a world market price, the Department finds that it does not matter whether we use the U.S. import statistics for durum grade 2 (as suggested by Gidasa), or the international auction price (as we did in the preceding review) as the world market price. (The Department has been unable to find any additional grade specific data.) The result is the same in that the Department finds that the prices that Gidasa paid for wheat purchased under Decree 2004/5468 in the POR were higher than world market prices, inclusive of delivery charges. Therefore, we preliminarily find that this program does not confer a countervailable benefit. *See* Memorandum to the File, ''Calculations for the Preliminary Results for Gidasa Sabanci Gida Sanayi ve Ticaret A.S.'' (June 5, 2006).

II. Programs Preliminarily Determined To Be Not Used

1. VAT Support for Domestic Machinery and Equipment Purchases
2. Pre–Shipment Export Loans
3. Resource Utilization Support Fund (''KKDF'') Tax Exemption on Export–Related Loans
4. Banking and Insurance (''BIST'') Tax Exemption on Export–Related Loans
5. Normal Foreign Currency Export Loans

6. GIEP
   a. Additional Refunds of VAT
   b. Postponement of VAT on Imported Goods
   c. Exemption from Certain Taxes, Duties, Fees (Other Tax Exemptions)
   d. Exemption from Certain Customs Duties and Fund Levies
   e. Payment of Certain Obligations of Firms Undertaking Large Investments
   f. Subsidized Turkish Lira Credit Facilities
   g. Land Allocation
   h. Interest Spread Return Program
   i. Energy Support
7. Exemption from Mass Housing Fund Levy (Duty Exemptions)
8. Direct Payments to Exporters of Wheat Products to Compensate for High Domestic Input prices
9. Export Credit Through Foreign Trade Corporate Companies Credit Facility
10. Pasta Export Grants
11. Corporate Tax Deferral
12. Subsidized Credit for Proportion of Fixed Expenditures
13. Subsidized Credit in Foreign Currencies

14. Subsidized Turkish Lira Credit Facilities

15. Exemption from Mass Housing Fund Levy (Duty Exemptions)
16. Performance Foreign Currency Loans

**Preliminary Results of Review**

For the period January 1, 2004, through December 31, 2004, we preliminarily determine the net subsidy rate for Gidasa to be that specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department will instruct U.S. Customs and Border Protection (''CBP'') to liquidate all entries without regard to countervailing duties.

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at the rate below on the FOB value of all shipments of the subject merchandise from Gidasa that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

| Company | Ad valorem rate |
|---|---|
| Gidasa Sabanci Gida Sanayi ve Ticaret A.S. ..... | 0.00 percent |

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

For companies that were not named in our notice initiating this administrative review, the Department has directed CBP to assess countervailing duties on all entries between January 1, 2004, and December 31, 2004, at the rates in effect at the time of entry.

For all non–reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order: Certain Pasta (''Pasta'') From Turkey*, 61 FR 38546 (July 24, 1996), or the company–specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

**Public Comment**

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. *See* 19 CFR 351.309(c)(ii).

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 5, 2006.

**David M. Spooner,**

*Assistant Secretaryfor Import Administration.*

[FR Doc. E6–9007 Filed 6–8–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 060506B]**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meetings of its Monkfish Oversight Committee in June, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Thursday, June 29, 2006, at 9 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Monkfish Plan Development Team (PDT) will present to the committee its analysis of, and recommendations for, target total allowable catch (TAC) alternatives and associated management measures for Framework 4. In addition, the PDT will provide comments and recommendations on other measures previously identified by the committee for consideration in Framework 4. The measures to be discussed include, but are not limited to, monkfish trip limits and days-at-sea usage requirements in the northern management area, days-at-sea leasing, industry proposals for a large-mesh gillnet category and a shift in the boundary of the monkfish fishery off the North Carolina/Virginia coast.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 6, 2006.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E6–9025 Filed 6–8–06; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 060506C]**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Sea Scallop Survey Advisory Panel in June, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Wednesday, June 28, 2006 at 8:30 a.m.

**ADDRESSES:** The meeting will be held in two locations. The meeting will start at the Dockside Repair, 14 Hervey Tichon Avenue, New Bedford, MA 02740; telephone: (508) 993–5300; fax: (508) 991–2226. Later in the day, the meeting will move to the Harbor Development Commission, 106 Co-op Wharf, New Bedford, MA 02740, telephone: (508) 961–3000; fax: (508) 979–1517.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The agenda will include a survey dredge workshop to identify ways to improve the performance and consistency of the NMFS survey dredge. The panel will hear and discuss a presentation on compatibility, statistical design, and analysis of industry-based surveys to estimate scallop biomass and determine TACs. The panel will also approve terms of reference, agree on short and long-term work objectives, and choose a chair and vice-chair.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 6, 2006.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E6–9026 Filed 6–8–06; 8:45 am]

**BILLING CODE 3510–22–S**

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Notice of Meetings; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

**TIME AND DATE OF MEETING:** 9 a.m., July 19, 2006.

**PLACE:** Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

**STATUS:** Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

**MATTERS TO BE CONSIDERED:** This public hearing and meeting is the second in a series concerning the Department of Energy's (DOE) and National Nuclear Security Administration's (NNSA) incorporation of safety into the design and construction of new and existing DOE defense nuclear facilities. The Board is responsible, pursuant to its statutory charter, to review and evaluate the content and implementation of standards relating to the design and construction of such facilities. The Board has previously observed the need for improvement in the incorporation of safety early in the design of certain new defense nuclear facilities. These observations led to the initial public hearing and meeting on safety and design, which the Board convened on December 7, 2005. At that hearing, the Board explored DOE's safety policies, expectations and processes for integrating safety early into the design and construction of new facilities and the modification of existing facilities. The Board heard testimony from DOE and NNSA officials concerning recognition of deficiencies in this area, and DOE's and NNSA's plans and commitments to revise its relevant Orders and Manuals to ensure integration of safety early in the design and construction process. This second hearing on safety in design will focus on actions taken by DOE and NNSA to improve incorporation of safety early in the design process, and will examine progress concerning relevant commitments made prior to and at the first hearing. The Board again expects to hear presentations from both DOE and NNSA senior management officials concerning integration of safety into design. The Board may also collect any other information relevant to health or safety of the workers and the public, with respect to safety in design, that may warrant Board action. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

**FOR FURTHER INFORMATION CONTACT:** Brian Grosner, Deputy General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** Requests to speak at the hearing may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on July 18, 2006, will be scheduled for time slots, beginning at approximately 12:30 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start the 9 a.m. hearing and meeting. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC office. The Board will hold the record open until August 19, 2006, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: June 7, 2006.

**A.J. Eggenberger,**

*Chairman.*

[FR Doc. 06–5310 Filed 6–7–06; 1:36 pm]

**BILLING CODE 3670–01–P**

## DEPARTMENT OF ENERGY

**[Docket Nos. EA–314 & EA–315]**

### Applications To Export Electric Energy; BP Energy Company

**AGENCY:** Office Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of Applications.

**SUMMARY:** In separate applications, BP Energy Company (BP Energy) has applied for authority to transmit electric energy from the United States to Mexico and from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before July 10, 2006.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office Electricity Delivery and Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 22, 2006, BP Energy filed two separate applications with DOE for authority to transmit electric energy from the United States to Mexico and from the United States to Canada. BP Energy is a direct, wholly-owned subsidiary of BP America Production Company, one of the largest oil and natural gas producers in the United States. Some of BP Energy's affiliates own interconnection facilities necessary to deliver power from cogeneration facilities to the grid, but neither BP Energy nor its affiliates own electric transmission facilities in North America or have franchised service territories or captive wholesale or retail customers. The energy BP Energy proposes to deliver to Mexico and Canada will be purchased from electric utilities, power marketers, Federal power marketing agencies, and other utilities in the United States.

In OE Docket No. EA–314, BP Energy proposes to transmit electric energy to Mexico and arrange for the delivery of those exports over the international transmission facilities presently owned by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricdad, the national utility of Mexico.

In OE Docket No. EA–315, BP Energy proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the BP Energy applications to export electric energy to Mexico and Canada should be clearly marked with Docket No. EA–314 or Docket No. EA–315, respectively. Additional copies are to be filed directly with Rhonda Denton, Regulatory Affairs, BP Energy Company, 501 Westlake Park Blvd., Houston, Texas 77079 and Mark R. Haskell, Joseph C. Hall, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on June 5, 2006.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E6–8986 Filed 6–8–06; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Fossil Energy; National Petroleum Council

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

This notice announces a meeting of the National Petroleum Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, June 21, 2006.

**ADDRESSES:** Willard Intercontinental Hotel, 1401 Pennsylvania Ave., NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** James Slutz, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202–586–5600.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

**Tentative Agenda**

- Call to Order and Introductory Remarks.
- Remarks by the Honorable Samuel W. Bodman, Secretary of Energy.
- Progress Report on the NPC's Global Oil and Natural Gas Study.
- Administrative Matters.
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
- Adjournment.

*Public Participation:* The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James Slutz at the address or telephone number listed above. Request must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

*Transcripts:* Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 6, 2006.

**Carol Matthews,**

*Acting Advisory Committee, Management Officer.*

[FR Doc. E6–9017 Filed 6–8–06; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–8071–7]**

### Access to Confidential Business Information by Eagle Technologies, Incorporated

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor Eagle Technologies, Incorporated of Lanham, MD access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than June 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** Colby Litner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Notice Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Documents?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket 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/*.

#### II. What Action is the Agency Taking?

Under contract number EP–W–06–029, Eagle Technologies, Incorporated, of 9301 Annapolis Road, Suite 200, Lanham, MD, will assist EPA by providing security support services, which will include but not be limited to maintaining the Federal Triangle access system; installing locks and keys; changing locks and combinations; issuing identification and building passes; escorts in all secure areas; and other administrative support functions.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number EP–W–06–029, Eagle Technologies, Incorporated will require access to CBI submitted to EPA under all sections of TSCA, to perform successfully the duties specified under the contract.

Eagle Technologies, Incorporated personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA, that the Agency may provide Eagle Technologies, Incorporated access to these CBI materials on a need-to-now basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Eagle Technologies, Incorporated personnel will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual*.

Clearance for access to TSCA CBI under contract number EP–W–06–029 may continue until March 31, 2011.

Eagle Technologies, Incorporated personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

#### List of Subjects

Environmental protection, Confidential business information.

Dated: June 1, 2006.

**Vicki A. Simons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E6–9008 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6676–2]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

#### Draft EISs

*EIS No. 20060046, ERP No. D–BIA–K65299–CA,* Scotts Valley Band of Pomo Indians, Proposed 29.87 Acre Fee-to-Trust Transfer and Casino Project, Contra Costa County, CA.

*Summary:* EPA expressed environmental concerns about contamination from past industrial uses of the project site and requested additional information on hazardous materials characterization and procedures to be used to address contamination.

Rating EC2.

*EIS No. 20060052, ERP No. D–NRC–F06029–MI,* GENERIC—License Renewal of Nuclear Plants, Supplement 27 to NUREG–1437, Regarding Palisade Nuclear Plant, Located in Covert Township, Van Buren County, MI.

*Summary:* EPA expressed environmental concerns about risk estimates and entrainment of fish and shellfish in early life stages.

Rating EC2.

*EIS No. 20060106, ERP No. D–AFS–L65505–ID,* Clear Prong Project, Timber Harvest, Temporary Road Construction, Road Maintenance, Road Decommissioning, Thinning of Sub-Merchantable Tree, and Prescribed Fire, Boise National Forest, Cascade Ranger District, Valley County, ID.

*Summary:* EPA expressed environmental concerns about water

quality impacts, and requested the Forest Service to confirm the expected beneficial impacts associated with restoration in a water quality impaired water body.

Rating EC1.

*EIS No. 20060115, ERP No. D–AFS–J65460–UT,* Upper Strawberry Allotments Grazing, Authorize Livestock Grazing, Heber Ranger District, Uinta National Forest, Wasatch County, UT.

*Summary:* EPA expressed environmental concerns about grazing impacts on riparian habitat and water quality, and suggested that the Final EIS explore more rigorous monitoring measures, and development of a comprehensive monitoring plan that is tied to specific adaptive measures that can be implemented in response to exceedance of thresholds or standards.

Rating EC2.

*EIS No. 20060127, ERP No. D–AFS–K65304–CA,* North 49 Forest Health Recovery Project, Restore Fire Adapted Forest System, Located in the Red (MA–16) and Logan (MA–45) Management Areas, Hat Creek Ranger District, Lassen National Forest, Shasta County, CA.

*Summary:* EPA expressed environmental concerns about potential impacts to the watershed, in particular to water quality and soil, and recommended that the final EIS include monitoring plans and mitigation measures and that impacts to Wildland Urban Interface areas be analyzed.

Rating EC2.

*EIS No. 20060131, ERP No. D–AFS–L65506–OR,* Kelsey Vegetation Management Project, Moving Resource Conditions Closer to the Goals and Desired Future Condition, Deschutes National Forest Land Resource Management Plan, Bend-Fort Rock Ranger District, Deschutes County, OR.

*Summary:* EPA expressed environmental concern about cumulative effects.

Rating EC1.

*EIS No. 20060132, ERP No. D–AFS–L65507–ID,* White/White Analysis Project, Proposes Vegetative Management and Watershed Improvement, Lolo Creek, Chamook Creek, White Creek, Mike White Creek, Nevada Creek, and Utah Creek, Lochsa Ranger District, Clearwater National Forest, Idaho and Clearwater County, ID.

*Summary:* EPA supports the restoration of riparian/stream channel, aquatic ecosystem, and watershed conditions. However, EPA expressed environmental concerns about sediment loading and temperature impacts from the stated levels of regeneration harvest to water quality, aquatic resources, and source water.

Rating EC2.

*EIS No. 20060082, ERP No. DS–USA–L11037–AK,* U.S. Army Alaska Battle Area Complex (BAX) and a Combined Arms Collective Training Facility (CACTF), Construction and Operation, Additional Information on Site Alternative, within U.S. Army Training Lands in Alaska.

*Summary:* EPA expressed environmental concerns about wetland and storm water impacts, and requested additional information on compensatory mitigation for unavoidable wetland impacts and storm water planning, monitoring and adaptive management.

Rating EC2.

**Final EISs**

*EIS No. 20060004, ERP No. F–FHW–D40326–MD,* Inter County Connector (ICC) from I–270 to US–1, Funding and U.S. Army COE Section 404 Permit, Montgomery and Prince George's Counties, MD.

*Summary:* EPA continues to have environmental concerns about impacts related to wetland complexes and tributary streams in particular. Nevertheless, EPA is pleased to note that FHWA and the Maryland State Highway Administration have incorporated many features intended to reduce or mitigate impacts.

*EIS No. 20060135, ERP No. F–FHW–F40425–OH,* US–24 Transportation Project, Improvements between Napoleon to Toledo, Funding, Lucas and Henry Counties, OH

*Summary:* EPA continues to have environmental concerns about commitments to floodplain and habitat mitigation as well as emergency access.

*EIS No. 20060180, ERP No. F–AFS–F65060–IN,* Tell City Windthrow 2004 Project, Salvage Harvest and Prescribed Burning of Windthrow Timber, Implementation, Hoosier National Forest, Perry, Crawford and Dubois Counties, IN.

*Summary:* EPA does not object to this project.

Dated: June 6, 2006.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E6–8996 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6676–1]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed May 29, 2006 through June 2, 2006

Pursuant to 40 CFR 1506.9.

*EIS No. 20060229, Revised Draft EIS, FHW, TX,* Grand Parkway (State Highway 99) Updated Information, Segment E from IH to U.S. 290; Segment F–1 from U.S. 290 to SH 249; Segment F–2 from SH 249 to IH 45 and Segment G from IH 45 to U.S. 59, Right-of-Way Permit and U.S. Army COE Section 404 Permit, City of Houston, Harris and Montgomery Counties, TX, Comment Period Ends: August 25, 2006, Contact: Gary N. Johnson 512–536–5964.

*EIS No. 20060230, Draft Supplement, BLM, UT,* Price Field Resource Management Plan, Updated Information and Analysis, Areas of Critical Environmental Concerns, Implementation, Carbon and Emery Counties, UT, Comment Period Ends: July 24, 2006, Contact: Floyd Johnson 435–636–3600.

*EIS No. 20060231, Final EIS, IBR, NM,* Carlsbad Project Water Operations and Water Supply Conservation, Changes in Carlsbad Project Operations and Implementation of Water Acquisition Program, U.S. COE Section 404 Permit, NPDES, Eddy, De Baca, Chaves, and Guadelupe Counties, NM, Wait Period Ends: July 10, 2006, Contact: Marsha Carra 505–462–3602.

*EIS No. 20060232, Final EIS, AFS, NY,* Finger Lakes National Forest Project, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Seneca and Schuyler Counties, NY, Wait Period Ends: July 10, 2006, Contact: Melissa Reichert 802–747–6754.

*EIS No. 20060233, Draft EIS, FHW, NY,* Long Island Expressway (LIE) Rest Area Upgrade Project, Upgrading the Existing Rest Area from Route 1–495/Long Island Expressway between Exits 51 and 52, Funding, Suffolk County, NY, Comment Period Ends: July 31, 2006, Contact: Matthew Hoffman 631–952–7049.

*EIS No. 20060234, Final EIS, AFS, IL,* Shawnee National Forest Proposed Land and Resource Management Plan

Revision, Implementation, Alexander, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Union and Williamson Counties, IL, Wait Period Ends: July 10, 2006, Contact: Steve Hupe 618–253–7114.

*EIS No. 20060235, Draft EIS, CGD, MA,* Neptune Liquefied Natural Gas (LNG), Construction and Operation, Deepwater Port License Application, (Docket Number USCG–2004–22611) Massachusetts Bay, Gloucester and Boston, MA, Comment Period Ends: July 24, 2006, Contact: Mark Prescott 202–267–0225.

Dated: June 9, 2006.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E6–8997 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6675–9]**

### Notice of Intent: Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Chuitna Coal Project in Southcentral Alaska

**AGENCY:** U.S. Environmental Protection Agency.

*Purpose:* In accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA), EPA, as the lead Federal agency, has identified a need to prepare a Supplemental Environmental Impact Statement (SEIS) and therefore issues this Notice of Intent in accordance with 40 CFR 1501.7.

*For a Copy of the Scoping Document and to be Placed on the Project Mailing List Contact:* Hanh Shaw, Project Manager, Office of Water and Watersheds (OWW–130), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–0171, Fax: (206) 553–0165, E-mail: *shaw.hanh@epa.gov.*

**SUMMARY:** The Chuitna Coal Project (Project) is located on State of Alaska land in the Beluga Coal Field, approximately 45 miles west of Anchorage, Alaska. The Project is based on the development of a 1 billion ton, ultra low sulfur, subbituminous coal resource. The proposed Project includes a surface coal mine and associated support facility, mine access road, coal transport conveyor, personnel housing, air strip facility, a logistic center, and coal export terminal. The proposed coal mine is located approximately 10 miles inland from the Native Village of Tyonek and Cook Inlet. The project proponent, PacRim Coal, LP, predicts a coal production rate of approximately 15 million tons per year, and a 25-year mine life based on current estimated coal reserves.

A previous Project design was evaluated in an EIS and permitted by most of the applicable State and Federal regulatory programs in the early 1990s, although the Project did not proceed to development. There have been substantial changes in the Project design and in the regulatory requirements since this project went through the first permitting and EIS process. Therefore, a comprehensive, stand-alone Supplemental EIS will be prepared for the new proposal.

The administrative actions that the SEIS must address include issuing an EPA Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) new source permit and a U.S. Army Corps of Engineers CWA section 404 and Rivers and Harbors Act section 10 permit. The SEIS will also address issues related to the Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) permit, which governs all aspects of the mining operation and infrastructure. The U.S. Army Corps of Engineers and the State of Alaska are participating as cooperating agencies in the NEPA process.

*Alternatives:* The alternatives to be evaluated include: The ''no action'' alternative, wastewater discharge alternatives and alternative discharge locations. In addition, the SEIS will evaluate mine access road and conveyor alignment alternatives, and coal export terminal alternatives. Additional alternatives may be developed based on comments received during scoping.

*Scoping:* The public scoping period begins with the publication of this Notice and concludes July 24, 2006. EPA invites Federal agencies, Native Tribes, State and local governments, and members of the public to comment on the scope of the SEIS. Scoping meetings for the purpose of identifying issues to be evaluated in the SEIS will be held in Kenai on July 10, in Anchorage on July 11, and in the Tyonek and Beluga communities on July 12, 2006. The exact locations and times of the meetings will be announced in local papers. The public is invited to attend and identify issues that should be addressed in the SEIS. A scoping document that explains in greater detail the project and alternatives identified at this time will be sent to known interested parties. The public can obtain a copy of the scoping document by contacting Hanh Shaw at the phone number, e-mail address, and mailing address listed at the above in this notice.

*How to Comment:* EPA invites public comment on the proposed scope of this SEIS. Comments may be submitted by mail, electronic mail, or fax, to Hanh Shaw at the contact information above, by July 24, 2006.

*Estimated Date of DSEIS Release:* February 2007.

*Responsible Official:* Ron Kreizenbeck, Deputy Regional Administrator.

Dated: June 6, 2006.

**Robert W. Hargrove,**

*Division Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E6–8998 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–0309; FRL–8059–4]**

### Pesticide Product; Registration Applications

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

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Comments must be received on or before August 8, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0309, by one of the following methods:

- *http://www.regulations.gov/*: Follow the on-line instructions for submitting comments.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502P), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

*Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502P), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. S–4400, One Potomac Yard 2777 S. Crystal Dr., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0309. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–0309. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm/*.

*Docket*: All documents in the docket are listed in the regulations.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov/* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502P), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. S–4400 One Potomac Yard 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511P), listed in the table in this unit:

| Regulatory Action Leader | Telephone number/e-mail address | Mailing address | File symbol |
|---|---|---|---|
| Rebecca Edelstein | (703) 605–0513 *Edelstein.Rebecca@epa.gov*. | Biopesticides and Pollution Prevention Division (7511P), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 | 81179–R |
| Gail Tomimatsu | (703) 308–8543; *tomimatsu.gail@epa.gov* | Do. | 82706–R |

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

### II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

*Products Containing Active Ingredients not Included in any Previously Registered Products*

*File Symbol*: 81179–R. *Applicant*: BioProdex, Inc., Gainesville Technology Enterprise Center (GTEC) Box 5, Suite 205, 2153 SE Hawthorne Rd., Gainesville, FL 32641. *Product Name*: Solvinix.*Type of product*: microbial pesticide (herbicide) *Active ingredient*: Tobacco Mild Green Mosaic Tobamovirus at 20%.*Proposed classification/Use*: For postemergence application to kill tropical soda apple in rangelands, grass pastures, sod-production fields, Conservation Reserve Program areas, other natural areas (wildlife management areas, Florida Greenways and Trail lands, campgrounds and trails, and woodlands), around cattle feedlots, pens, and stockyards, rights-of-way, roadsides, ditch-banks, and citrus and sugarcane in Florida and other southeastern states. (R. Edelstein.)

*File Symbol*: 82706–R. *Applicant*: Bio-Oz Biotechnologies Ltd., Kibbutz Yad Mordechai DN Hof Ashkelon 79145, Israel. *Product Name:*AgroGuard Z. *Type of product*: microbial pesticide (viruscide) *Active ingredient*: Avirulent Strain of Zucchini Yellow Mosaic Virus. *Proposed classification/Use*: For protection of young cucurbit plants: cucumbers, cantaloupes, watermelons, muskmelons, winter and summer squash, pumpkins, zucchini and other cucurbits against virulent Zucchini Yellow Mosaic Virus infection. (G. Tomimatsu.)

### List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 1, 2006.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 06–5265 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2005–0061; FRL–8072–9]**

## Azinphos-methyl and Phosmet Proposed Decisions; Notice of Availability

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's proposed re-evaluation decisions for the pesticides azinphos-methyl and phosmet, the grower impact assessments, human health documents, environmental fate and effects documents, and other related documents, and opens a 60–day public comment period. These proposed decisions implement the 2001 IREDs for these pesticides as well as the 2001 Memorandum of Agreement between EPA and the phosmet technical registrants and the 2002 Memorandum of Agreement between EPA and the azinphos-methyl technical registrants. EPA is proposing a schedule to phase out the remaining uses of azinphos-methyl and is proposing to lengthen some restricted-entry intervals (REIs) and seek additional biomonitoring data for the nine time-limited uses of phosmet. EPA is also proposing certain additional restrictions on the use of azinphos-methyl and phosmet.

**DATES:** Comments must be received on or before August 8, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0061 for azinphos-methyl, or identified by docket identification (ID) number EPA–HQ–OPP–2002–0354 for phosmet, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2005–0061 for azinphos-methyl and to docket ID number EPA–HQ–OPP–2002–0354 for phosmet. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Tom Myers, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001;

telephone number: 703-308-8589, fax number: 703-308-8041; e-mail address: *myers.tom@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 interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### *A. What Action is the Agency Taking?*

EPA is making available the proposed decision documents and related supporting documents for azinphos-methyl and phosmet.

In the azinphos-methyl 2001 IRED, and subsequent Memorandum of Agreement, the Agency concluded, based on evaluation of the risks and benefits of the use of azinphos-methyl, that 35 uses should either be immediately canceled or phased out over a four-year period. The remaining ten time-limited azinphos-methyl uses (almonds, apples/crabapples, highbush and lowbush blueberries, Brussels sprouts, cherries, nursery stock, parsley, pears, pistachios, and walnuts) were eligible for reregistration for a period of four years, after which EPA would accept and evaluate applications for renewal of the registrations.

In the phosmet 2001 IRED EPA determined that three uses should be canceled and that 33 uses were eligible for reregistration. EPA made a time-limited determination for nine uses (apples, crabapples, peaches, pears, nectarines, apricots, plums/prunes, grapes, and highbush blueberries) and would reconsider those uses in 2006. The IRED provided that this reconsideration would involve a determination whether the restricted-entry intervals (REIs) for workers that were imposed as a result of the IRED should be maintained indefinitely or whether longer ''default'' REIs, or other appropriate REIs, should be adopted.

These IREDs were implemented through Memoranda of Agreements with the phosmet and azinphos-methyl technical registrants in 2001 and 2002, respectively.

After consideration of the risks and benefits of these pesticides, as provided in the IREDs, EPA is proposing that the remaining uses of azinphos-methyl be phased out according to the following schedule: almonds, pistachios, walnuts, Brussels sprouts, and nursery stock in 2007 and apples/crabapples, blueberries, cherries, pears, and parsley in 2010. EPA is also proposing certain additional risk-mitigation restrictions and activities, including larger buffers, reducing annual application rates, and eliminating the few remaining aerial uses.

EPA is proposing to increase the REIs for most of the nine time-limited uses of phosmet and to require additional biomonitoring data and additional use restrictions.

The decision documents, including the Agency's supporting rationale for these proposed decisions can be found in docket identification number EPA–HQ–OPP–2005–0061 for azinphos-methyl, and docket identification number EPA–HQ–OPP–2002–0354 for phosmet at *http://www.regulations.gov*.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's proposed decisions for azinphos-methyl and phosmet.

Comments should be limited to issues raised by the proposed decisions and associated documents. All comments should be submitted using the methods in ADDRESSES, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for azinphos-methyl and phosmet.

### *B. What is the Agency's Authority for Taking this Action?*

EPA is reevaluating these uses of AZM and phosmet pursuant to section 3c(5) of FIFRA, which provides, among other things, that the EPA Adminstrator shall register a pesticide when its use will not cause unreasonable adverse effects on the environment.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 5, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6–8929 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2006–0488; FRL–8071–8]**

## Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a

new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 1, 2006, to May 19, 2006, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before July 10, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) no. EPA–HQ–OPPT–2006–0488, by one of the following methods.

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO, EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2006–0488. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
- *Instructions*: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0488. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''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 regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the regulations.gov index. 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 electronically through regulations.gov or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or

an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 1, 2006, to May 19, 2006, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

### III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 71 PREMANUFACTURE NOTICES RECEIVED FROM: 05/01/06 TO 05/19/06

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–06–0465 | 05/01/06 | 07/29/06 | Meadwestvaco Corporation | (S) Asphalt emulsifier salt | (G) Tall-oil fatty, alkylamino amides, hydrochloride |
| P–06–0466 | 05/01/06 | 07/29/06 | CBI | (G) Construction materials additive | (G) 2-propenoic acid, 2-methyl-, methyl ester, polymer |
| P–06–0467 | 05/01/06 | 07/29/06 | CBI | (G) Blocked isocyanate | (G) Open, non-dispersive use. |
| P–06–0468 | 05/02/06 | 07/30/06 | CBI | (S) hardener for architectural coatings harener for metal primers for maintenance coatings | (G) Oxirane, (chloromethyl)-, polymer with .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] and methyloxirane polymer with oxirane 2-aminopropyl methyl ether |
| P–06–0469 | 05/02/06 | 07/30/06 | CBI | (S) Chlorinated polyester resin used in ultra violet curable inks and coatings | (G) Chlorinated polyester resin |
| P–06–0470 | 05/02/06 | 07/30/06 | Cognis Corporation | (S) Performance additive for hard surface cleaners | (S) 1-propanaminium, *N,N,N*-trimethyl-3-[(2-methyl-1-oxo-2propenyl)-, chloride, polymer with *N*-(1-methylethyl)-2-propenamide, 2-methyl-2-[(1-oxo-2-propenyl) amino]-1-propanesulfonic acid, and 2-propenoic acid, Sodium salt |
| P–06–0471 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0472 | 05/02/06 | 07/30/06 | CBI | (G) Nonwoven internal additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0473 | 05/02/06 | 07/30/06 | CBI | (G) Tile surface treatment | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0474 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0475 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0476 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0477 | 05/02/06 | 07/30/06 | CBI | (G) Carpet treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0478 | 05/02/06 | 07/30/06 | CBI | (G) Carpet treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0479 | 05/02/06 | 07/30/06 | CBI | (G) Carpet treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0480 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0481 | 05/02/06 | 07/30/06 | CBI | (G) Paper treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0482 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0483 | 05/02/06 | 07/30/06 | CBI | (G) Paper treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0484 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0485 | 05/02/06 | 07/30/06 | CBI | (G) texile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0486 | 05/02/06 | 07/30/06 | CBI | (G) Paper treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0487 | 05/02/06 | 07/30/06 | CBI | (G) monomer for textile and paper treatment additive | (G) Fluoroalkyl acrylate |
| P–06–0488 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0489 | 05/02/06 | 07/30/06 | CBI | (G) textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |

I. 71 PREMANUFACTURE NOTICES RECEIVED FROM: 05/01/06 TO 05/19/06—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–06–0490 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0491 | 05/02/06 | 07/30/06 | CBI | (G) textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0492 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0493 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0494 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0495 | 05/02/06 | 07/30/06 | CBI | (G) Carpet treatment additive | (G) Fluorochemical urethane |
| P–06–0496 | 05/02/06 | 07/30/06 | CBI | (G) Carpet treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0497 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0498 | 05/02/06 | 07/30/06 | CBI | (G) Carpet treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0499 | 05/02/06 | 07/30/06 | CBI | (G) Nonwoven internal additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0500 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0501 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0502 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0503 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkylacrylate copolymer |
| P–06–0504 | 05/02/06 | 07/30/06 | CBI | (G) Carpet treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0505 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0506 | 05/02/06 | 07/30/06 | CBI | (G) Nonwoven internal additive | (G) Fluoroalkyl methacrylate copolymer |
| P–06–0507 | 05/02/06 | 07/30/06 | CBI | (G) Paper treatment additive | (G) Fluoroalkyl acrylate copolymer |
| P–06–0508 | 05/02/06 | 07/30/06 | CBI | (G) Textile treatment additive | (G) Fluoroalkylacrylate copolymer |
| P–06–0509 | 05/03/06 | 07/31/06 | CBI | (G) Solvent in fuel production; solvent in industrial plants | (G) Substituted alkanol |
| P–06–0510 | 05/04/06 | 08/01/06 | CBI | (G) Additive, open, non-dispersive use | (G) Polyether modified polydimethylsiloxane |
| P–06–0511 | 05/04/06 | 08/01/06 | CBI | (G) Additive, open, non-dispersive use | (G) Polyether modified polydimethylsiloxane |
| P–06–0512 | 05/04/06 | 08/01/06 | CBI | (G) Component in polyurethane adhesive/sealant. | (G) Polyurethane prepolymer with a polycarbonatediol |
| P–06–0513 | 05/04/06 | 08/01/06 | CBI | (G) Metal refining intermediate | (S) Tantalum, fluoro hydrogen complexes |
| P–06–0514 | 05/05/06 | 08/02/06 | CBI | (G) Chemical intermediate | (G) Al, mixed metal and alcohol complex |
| P–06–0515 | 05/08/06 | 08/05/06 | CBI | (G) Paper strength additive | (G) Glyoxalated acrylamide, dadmac, 2-hydroxyethylacrylate ternary copolymer |
| P–06–0516 | 05/08/06 | 08/05/06 | CBI | (G) Paper strength additive | (G) Glyoxalated branched acrylamide, dadmac, 2-hydroxyethylacrylate ternary copolymer |
| P–06–0517 | 05/08/06 | 08/05/06 | CBI | (G) Catalyst | (S) Neodymium, tris[bis(2-ethylhexyl)phosphato-.kappa.o′′,-.kappa.o′′′]]- |
| P–06–0518 | 05/08/06 | 08/05/06 | IGM Resins Inc. | (G) Ultra violet initiator | (S) Idodium, bis(4-methylphenyl)-, hexafluorophosphate(1-) |
| P–06–0519 | 05/09/06 | 08/06/06 | CBI | (G) Pigment additive; open, non-dispersive use | (G) .beta.-alanine[(substituted-pyrrole-diyl)bis[(substituted)bis, aluminium salt (3:2) |
| P–06–0520 | 05/09/06 | 08/06/06 | CBI | (G) Pigment additive; open, non-dispersive use | (G) [biphenyl]-sulfonamide],-((substituted)pyrrole-diyl)bis[(substituted)propyl- |
| P–06–0521 | 05/08/06 | 08/05/06 | CBI | (G) Paper strength additive | (G) Acrylamide, dadmac, 2-hydroxyethylacrylate ternary copolymer |
| P–06–0522 | 05/08/06 | 08/05/06 | CBI | (G) Paper strength additive | (G) Branched acrylamide, dadmac, 2-hydroxyethylacrylate ternary copolymer |

I. 71 PREMANUFACTURE NOTICES RECEIVED FROM: 05/01/06 TO 05/19/06—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–06–0523 | 05/09/06 | 08/06/06 | CBI | (G) Prepolymer of polyester urethane | (G) Aromatic saturated copolyester |
| P–06–0524 | 05/15/06 | 08/12/06 | Huntsman Corporation | (S) Intermediate for liquid soap component; intermediate for surfactant | (S) Propanesulfonic acid, 1(or 2)-hydroxy-, monosodium salt |
| P–06–0525 | 05/15/06 | 08/12/06 | Huntsman Corporation | (S) Liquid soap | (S) Octadecanoic acid, methyl-2-sulfoethyl ester, sodium salt |
| P–06–0526 | 05/15/06 | 08/12/06 | Huntsman Corporation | (S) Liquid soap | (S) 9-octadecanoic acid, (9*z*)-, methyl-2-sulfoethyl ester, sodium salt |
| P–06–0527 | 05/15/06 | 08/12/06 | Huntsman Corporation | (S) Liquid soap | (S) Fatty acids, $C_{8-18}$ and $C_{18}$-unsaturated, methyl-2-sulfoethyl esters, sodium salt |
| P–06–0528 | 05/15/06 | 08/12/06 | Huntsman Corporation | (S) Liquid soap | (S) Fatty acids, coco, hydrogenated, methyl-2-sulfoethyl ester, sodium salt |
| P–06–0529 | 05/15/06 | 08/12/06 | Huntsman Corporation | (S) Liquid soap | (S) Fatty acids, coco, heavy fractions, methyl-2-sulfoethyl esters, sodium salts |
| P–06–0530 | 05/11/06 | 08/08/06 | Septon Company of America | (S) Adhesives; lubricant; emulsion | (S) 2,5-furandione, polymer with 2-methyl-1-propene, amide imide |
| P–06–0531 | 05/15/06 | 08/12/06 | Oleon Americas, Inc. | (G) Lubricant base oil | (S) Fatty acids, coco, esters |
| P–06–0532 | 05/17/06 | 08/14/06 | CBI | (G) Coating component | (G) Substituted styrene acrylate copolymer |
| P–06–0533 | 05/17/06 | 08/14/06 | CBI | (G) Binder resin | (G) ''Carbomonocycledicarboxylic acid, polymer with alkenedioic acid, 1,3-dihydro-1,3-dioxo-5-isobenzofurancarboxylic acid, dihydro-3-(tetrapropenyl)-2,5-furandione, .alpha.,.alpha.′-[(1-methylethyliden-e)dicarbomonocycle]bis[.omega.-hydroxypoly(oxy-1,2-ethanediyl)] and .alpha., .alpha.′-[(1-methylethyliden-e)dicarbomonocycle]bis[.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)]]'' |
| P–06–0534 | 05/17/06 | 08/14/06 | CBI | (S) Base resin for ultraviolet light and electron beam curable formulations | (G) Oxirane based polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylycylohexane, 2-hydroxyethyl acrylate-blocked |
| P–06–0535 | 05/19/06 | 08/16/06 | BASF Corporation | (G) Automotive application | (G) Ester urethane |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 26 NOTICES OF COMMENCEMENT FROM: 05/01/06 TO 05/19/06

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–02–0256 | 05/01/06 | 04/25/06 | (G) Polyester polyether isocyanate |
| P–03–0591 | 05/01/06 | 03/23/06 | (G) Water dispersable polyurethane polymer |
| P–04–0289 | 05/17/06 | 04/21/06 | (G) Ethylene - tetrafluoroethylene copolymer |
| P–04–0291 | 05/16/06 | 05/03/06 | (G) Isocyanate functional polyester urethane polymer |
| P–04–0422 | 05/02/06 | 04/21/06 | (G) Tetraalkyl indone |
| P–04–0536 | 05/16/06 | 04/20/06 | (G) Polyurethane |
| P–04–0636 | 05/04/06 | 04/22/06 | (G) Cuprate, [[[[[[[(sulfonaphthalenyl)]azo]-(substitutedphenyl)]azo]-(substitutedsulfonaphthalenyl)]azo]-substitutedphenyl-substituted heteromonocycle], sodium salts |
| P–04–0721 | 05/12/06 | 05/08/06 | (G) Polysiloxane, aminoalkyl terminated polymers with urea functionality alkylcyclohexane |
| P–04–0844 | 05/15/06 | 04/20/06 | (G) Polyalkylene phthalocyanine |
| P–04–0888 | 05/10/06 | 04/12/06 | (G) Dynacoll 7130 |
| P–04–0950 | 05/09/06 | 05/01/06 | (G) Reaction product of substituted naphthalenesulfonic acid azo substituted phenyl amino substituted triazine compound and substituted phenyl azo substituted naphthalenesulfonic acid |

II. 26 NOTICES OF COMMENCEMENT FROM: 05/01/06 TO 05/19/06—Continued

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–05–0439 | 05/05/06 | 03/10/06 | (G) Acetate polymer with unsaturated alkane and alkenol, cyclic acetal with aldehyde |
| P–05–0508 | 05/08/06 | 04/10/06 | (S) Neodecanoic acid, oxiranylmethyl ester, polymer with 1,4-cyclohexanedimethanol, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane 2-aminopropyl methyl ether |
| P–05–0585 | 05/08/06 | 04/10/06 | (S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-methyl-2-propenoate, 1,1-dimethylethyl 2-methyl-2-propenoate and 2-hydroxyethyl 2-methyl-2-propenoate, tert-bu peroxide-initiated |
| P–05–0673 | 05/11/06 | 05/03/06 | (G) Siloxane coated silica nanoparticles |
| P–06–0029 | 05/02/06 | 04/19/06 | (G) Amine modified monomer acrylate |
| P–06–0105 | 05/17/06 | 04/25/06 | (S) Coke(coal tar), low-temp., low-temp. gasification pitch, calcined |
| P–06–0120 | 05/09/06 | 04/18/06 | (G) Naphthalenedisulfonic acid salt |
| P–06–0156 | 04/28/06 | 04/14/06 | (S) Silane, ethenyltrimethoxy-, reaction products with 1-butene-ethylene-propene polymer |
| P–06–0228 | 05/15/06 | 04/11/06 | (G) Alkylcarbosilane polymer |
| P–06–0235 | 05/15/06 | 04/11/06 | (G) Product 1: alkoxylated chloro-substituted alkylchlorosilane, chloro-substituted alkyl alkoxysilane |
| P–06–0236 | 05/15/06 | 04/11/06 | (G) Product 2: alkoxylated chloro-substituted alkylchlorosilane, chloro-substituted alkyl alkoxysilane |
| P–06–0251 | 05/17/06 | 05/04/06 | (G) Sodium salt of the copolymer of acrylic acid. methyl methacrylate, *p*-sulfophenymethallylether, sodium salt, sodium methallylsulfonate, 2-acrylamido-2-methylpropane sulfonic acid sodium salt |
| P–06–0270 | 05/16/06 | 05/10/06 | (S) Fatty acids, $C_{16–18}$, isononyl esters |
| P–93–1700 | 05/15/06 | 05/05/06 | (G) Polyester polyol isocyanate polymer |
| P–99–0858 | 05/09/06 | 05/01/06 | (G) Polyester polyether isocyanate polymer |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 31, 2006.

**LaRona M. Washington,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. E6–8931 Filed 6–8–06; 8:45 am]

**BILLING CODE 6560–50–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 July 6, 2006.

**A. Federal Reserve Bank of Atlanta** (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

*1. Riverside Banking Company*, Fort Pierce, Florida; to merge with First Community Bank Holding Corporation, and thereby indirectly acquire voting shares of its subsidiary, First Community Bank, both of Debary, Florida.

**B. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. Hunter Holding Company*, Hunter, North Dakota; to merge with Streeter Insurance Agency, Inc., Streeter, North Dakota, and thereby indirectly acquire State Bank of Streeter, Streeter, North Dakota.

In connection with this application, Applicant also has applied to acquire and merge with Streeter Insurance Agency, Inc., Streeter, North Carolina, and thereby engage in insurance agency activities in a town with a population not exceeding 5,000, pursuant to section 225.28(b)(11)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6–9013 Filed 6–8–06; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council

**ACTION:** Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 22, 2006. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, June 20, by

completing the form found online at: https://www.federalreserve.gov/secure/forms/cacregistration.cfm

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. EDT and is expected to conclude at 1 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

**Home Equity Lending**

- Assessing the impact of the rules implementing the Home Ownership and Equity Protection Act (HOEPA)
- Issues related to the subprime mortgage market
- Nontraditional mortgage products

**Financial Literacy**

- Issues related to the goals for and the effectiveness of financial literacy programs.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Kyan Bishop, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bishop, 202–452–6470.

Board of Governors of the Federal Reserve System, June 6, 2006.

**Jennifer J. Johnson**

*Secretary of the Board.*

[FR Doc. E6–8977 Filed 6–8–06; 8:45 am]

**BILLING CODE 6210–01–S**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0228]**

### Office of Civil Rights; Information Collection; Nondiscrimination in Federal Financial Assistance Programs

**AGENCY:** Office of Civil Rights, GSA.

**ACTION:** Notice of request for comments regarding a renewal to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding regarding nondiscrimination in Federal financial assistance programs. A request for public comments was published at 71 FR 10687, March 2, 2006. No comments were received. This OMB clearance expires on June 30, 2006. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: July 10, 2006.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Hillary Jaffe, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Britton, Compliance Officer, Office of Civil Rights, at telephone (202) 501–4347 or via e-mail to *evelyn.britton@gsa.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The General Services Administration (GSA) has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal Financial Assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA. These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there has been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there has been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

**B. Annual Reporting Burden**

*Respondents:* 200.
*Responses Per Respondent:* 1.
*Total Responses:* 200.
*Hours Per Response:* 2.
*Total Burden Hours:* 400.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

Dated: May 31, 2006

**Michael W. Carleton,**

*Chief Information Officer.*

[FR Doc. E6–8999 Filed 6–8–06; 8:45 am]

**BILLING CODE 6820–34–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Assistant Secretary for Planning & Evaluation Medicaid Program; Meeting of the Medicaid Commission

**AGENCY:** Assistant Secretary for Planning & Evaluation (ASPE), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a public meeting of the Medicaid Commission. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, 10(a)(1) and (a)(2)). The Medicaid Commission will advise the Secretary on ways to modernize the Medicaid program so that it can provide high-quality health care

to its beneficiaries in a financially sustainable way.

**DATES:** *The Meeting:* July 11–12, 2006. The meeting will begin at 9 a.m. on July 11, and 8:30 a.m. on July 12.

*Special Accommodations:* Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Medicaid Commission by June 30, 2006 (see **FOR FURTHER INFORMATION CONTACT**).

**ADDRESSES:** *The Meeting:* The meeting will be held at the following address: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, Virginia 22202, United States, telephone: (703) 486–1111, fax: (703) 769–3970.

*Web site:* You may access up-to-date information on the Medicaid Commission at *http://aspe.hhs.gov/medicaid/*.

**FOR FURTHER INFORMATION CONTACT:** Margaret Reiser, (202) 205–8255.

**SUPPLEMENTARY INFORMATION:** On May 24, 2005, we published a notice (70 FR 29765) announcing the Medicaid Commission and requesting nominations for individuals to serve on the Medicaid Commission. This notice announces a public meeting of the Medicaid Commission.

**Topics of the Meeting**

The Commission will discuss options for making longer-term recommendations on the future of the Medicaid program that ensure long-term sustainability. Issues to be addressed may include, but are not limited to: Eligibility, benefit design, and delivery; expanding the number of people covered with quality care while recognizing budget constraints; long term care; quality of care, choice, and beneficiary satisfaction; and program administration.

**Procedure and Agenda**

This meeting is open to the public. There will be a public comment period at the meeting. The Commission may limit the number and duration of oral presentations to the time available. We will request that you declare at the meeting whether or not you have any financial involvement related to any services being discussed.

After the presentations and public comment period, the Commission will deliberate openly. Interested persons may observe the deliberations, but the Commission will not hear further comments during this time except at the request of the Chairperson. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

**Authority:** 5 U.S.C. App. 2, 10(a)(1) and (a)(2).

Dated: June 2, 2006.

**Donald A. Young,**

*Acting Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.*

[FR Doc. E6–8993 Filed 6–8–06; 8:45 am]

**BILLING CODE 5150–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Targeted Evaluation of the President's Emergency Plan for AIDS Relief (PEPFAR) Funded Prevention of Mother-to-Child HIV Transmission (PMTCT), and Adherence to Antiretroviral Therapy (ART) Programs, Contract Solicitation Numbers (CSN) 2006–N–08428, 2006–N–08429, and 2006–N–08430

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Targeted Evaluation of the President's Emergency Plan for AIDS Relief (PEPFAR) Funded Prevention of Mother-to-Child HIV Transmission (PMTCT), and Adherence to Antiretroviral Therapy (ART) Programs, Contract Solicitation Numbers (CSN) 2006–N–08428, 2006–N–08429, and 2006–N–08430.

*Time and Date:* 8:30 a.m.–9 a.m., June 27, 2006 (Open). 9 a.m.–6 p.m., June 27, 2006 (Closed).

*Place:* Renaissance Concourse Hotel—Marriott, One Hartsfield Center Parkway, Atlanta, GA 30354, Telephone 404–209–9999.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to ''Targeted Evaluation of the PEPFAR Funded PMTCT, and ART Programs,'' Contract Solicitation Numbers (CSN) 2006–N–08428, 2006–N–08429, and 2006–N–08430.

*For Further Information Contact:* Amy L. Sandul, Health Scientist, National Center for HIV, STD, and Tuberculosis Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–41, Atlanta, GA 30333, Telephone 404.639.6485.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 2, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6–8991 Filed 6–8–06; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal Committee meeting.

*Name:* Advisory Committee on Immunization Practices (ACIP).

*Time and Date:* 8 a.m.–6 p.m., June 29, 2006. 8 a.m.–4 p.m., June 30, 2006.

*Place:* Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Building 19, Room 232, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

*Matters to be Discussed:* The agenda will include discussions on Human Papillomavirus Vaccine, which will include a VFC Vote; Varicella Virus Vaccine, which will include a VFC Vote; Influenza Vaccine; Mumps Outbreak; Use of Tdap in pregnant women; Adult Immunization Schedule; Pneumococcal Vaccine; Herpes zoster (Shingles) Vaccine; Childhood/Adolescent Immunization Schedule; Immunization Safety; Menactra Supply and Prioritization; Update on Rotavirus Vaccine; and Agency updates. Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: June 2, 2006.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E6–8994 Filed 6–8–06; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10195]**

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Center for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event.

The purpose of the Medicare Recovery Audit Contractor (RAC) Demonstration Project is to evaluate the cost and savings to the Medicare program and to make appropriate recommendations to Congress on the cost-effectiveness of extending or expanding the project. Because RACs have been used successfully in non-Medicare markets, The Centers for Medicare and Medicaid Services (CMS) is conducting this demonstration project to test new techniques for identifying and collecting overpayments.

This is a request for OMB approval of a Provider Satisfaction Survey to assess the impact of Medicare Recovery Audit Contractors (RACs) on the provider community. The Centers for Medicare and Medicaid Services (CMS) has contracted with Econometrica, Inc. to conduct an independent evaluation of the Medicare RAC demonstration. The results, which will be summarized in a report to Congress, will be used to assess the financial impact of the demonstration on the Medicare program and to make recommendations for the demonstration's extension or expansion. Previous research by the U.S. Government Accountability Office found that RACs have the potential to burden private providers. The purpose of this study is to determine whether RACs can perform effectively with a low risk of burden and friction with healthcare providers.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation of Medicare Recovery Audit Contractor (RAC) Demonstration Provider Satisfaction Survey; *Use:* The purpose of the RAC Provider Satisfaction Survey is to gauge provider communications and satisfaction with the RACs. Measuring providers' reactions to and experiences with RACs will enable CMS better understand the potential impact of the RACs on providers nationwide and to improve and refine the process, both in the context of the current demonstration as well as in future reform initiatives. The survey will cover all aspects of provider transactions with RACs. *Form Number:* CMS–10195 (OMB#: 0938–NEW); *Frequency:* Reporting—One-time; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1,200; *Total Annual Responses:* 1,200; *Total Annual Hours:* 276.

CMS is requesting OMB review and approval of this collection by *July 7, 2006,* with a 180-day approval period. Written comments and recommendation will be considered from the public if received by the individuals designated below by July 3, 2006.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by July 3, 2006:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attn: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, and

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: May 26, 2006.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 06–5134 Filed 6–1–06; 2:37 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10069, CMS–10137, CMS–1763 and CMS–10080]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Waiver Demonstration Application; *Use:* The Medicare Waiver Demonstration Application will be used to collect standard information needed to implement congressionally mandated and administration priority demonstrations. The application will be used to gather information about the characteristics of the applicant's organization, benefits, and services they propose to offer, success in operating the model, and evidence that the model is likely to be successful in the Medicare program. The standard application will be used for all waiver demonstrations and will reduce the burden on applicants, provide for consistent and timely information collections across demonstrations, and provide a user-friendly format for respondents; *Form Number:* CMS–10069 (OMB#: 0938–0880); Frequency: Reporting—On Occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 75; *Total Annual Responses:* 75; Total Annual Hours: 6000.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD) Plans; Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for PACE Organization to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application to Offer Prescription Drug Coverage in a New Region; *Use:* Coverage for the prescription drug benefit will be provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, Employer Group Waiver Plans (EGWP) and PACE plans may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates, and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application; *Form Number:* CMS–10137 (OMB#: 0938–0936); *Frequency:* Reporting—Other—depending on programs area and data requirements;

*Affected Public:* Business or other for-profit, not-for-profit institutions, Federal government; *Number of Respondents:* 101; *Total Annual Responses:* 101; *Total Annual Hours:* 3,828.

3. *Type of Information Collection Request:* Extension of a currently approved collection; Title of Information Collection: Request for Termination of Premium Hospital and/or Supplementary Medical Insurance and Supporting Regulations in 42 CFR 406.28 & 407.27; *Use:* Under 42 CFR 406.28 (a) and 407.27 (c) a Medicare beneficiary, wishing to voluntarily terminate enrollment in Medicare Supplementary Medical Insurance and/or Premium-Hospital Insurance can file a written request with CMS or the Social Security Administration. The form, Request for Termination of Premium Hospital and/or Supplementary Medical Insurance, was developed to comply with these requirements. *Form Number:* CMS–1763 (OMB#: 0938–0025); *Frequency:* Reporting: Other: One Time Only; *Affected Public:* Individuals or households, Federal, State, Local or Tribal Government; *Number of Respondents:* 14,000;

*Total Annual Responses:* 14,000; *Total Annual Hours:* 5,833.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Publications Use Study; *Use:* The Balanced Budget Act (BBA) of 1997 increased the number and type of health insurance options available to Medicare beneficiaries and implemented new preventative health care benefits. The BBA also gave CMS a greater responsibility to help Medicare beneficiaries better understand these increased health care options and benefits. This research is designed to strengthen the information dissemination efforts by CMS to meet beneficiaries' needs. The current study expands on previous methodology to include surveys of not only print-based publications but of Web-based publications as well. CMS is mandated to provide a range of information about Medicare health care options, benefits, rights and regulations. This research will evaluate how well CMS is currently meeting this mandate; *Form Number:* CMS–10080 (OMB#: 0938–0892); *Frequency:* Recordkeeping and Reporting: Quarterly; *Affected Public:* Individuals or households; *Number of Respondents:* 3880; *Total Annual Responses:* 3880; *Total Annual Hours:* 1,356.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: May 25, 2006.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E6–8748 Filed 6–8–06; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10109]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Reporting Initiative—Hospital Quality Measures; *Use:* The recently enacted section 5001(a) of the Deficit Reduction Act (DRA) sets out new requirements for the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) program. The RHQDAPU program was established to implement section 501(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The DRA builds on our ongoing voluntary Hospital Quality Initiative, which is intended to empower consumers with quality of care information to make more informed decisions about their health care, while also encouraging hospitals and clinicians to improve the quality of care provided to Medicare beneficiaries. The DRA revises the current hospital reporting initiative by stipulating new data collection requirements. The law provides a 2.0 percent reduction in points to the update percentage increase for any hospital that does not submit the quality data in the form, and manner, and at a time, specified by the Secretary. The Act also requires that we expand the ''starter set'' of 10 quality measures that we have used since 2003. To comply with these new requirements we must make changes to the Hospital Reporting Initiative. *Form Number:* CMS–10109 (OMB#: 0938–0918); *Frequency:* Recordkeeping, third party disclosure, and reporting—quarterly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 3,700; *Total Annual Responses:* 14,800; *Total Annual Hours:* 484,560.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on August 8, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2006.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E6–8749 Filed 6–5–06; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–30, CMS–10117, 10118, 10119, 10135, 10136 and CMS–R–206]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in the Hospice Conditions for Coverage and Supporting Regulations at 42 CFR 418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.83, 418.96, and 418.100; *Use:* The information collection requirements contained in the Hospice Conditions for Coverage information collection request (ICR) serve to ensure compliance with the hospice conditions of participation. The State survey agencies utilize the furnished information during the certification and re-certification periods to assist in determining compliance with the statute and regulations. In addition, data collected will be used to produce statistical reports to the Congress, to establish reimbursement rates, and to provide increased information on the hospice industry.; *Form Number:* CMS–R–30 (OMB#: 0938–0302); *Frequency:* Reporting—Other—depending on program areas and data requirements; *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal government; *Number of Respondents:* 2,874; *Total Annual Responses:* 2,874; *Total Annual Hours:* 9,930,912.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Qualification—Medicare Advantage (MA) Application For Coordinated Care, Private Fee-For-Service, Regional Preferred Provider Organization, Service Area Expansion For Coordinated Care and Private Fee-For-Service Plans, Medical Savings Account Plans ; *Use:* An entity seeking a contract as an MA organization must be able to provide Medicare's basic benefits plus meet the organizational requirements set out under 42 CFR Part 422. An applicant must demonstrate that it can meet the benefit and other requirements within the specific geographic area it is requesting. The application forms are designed to provide the information needed to determine the health plan's compliance. The regulatory requirements are incorporated into the MA applications. The MA application forms will be used to determine if an entity is eligible to enter into a contract to provide services to Medicare beneficiaries; *Form Number:* CMS–10117, 10118, 10119, 10135, 10136 (OMB#: 0938–0935); *Frequency:* Reporting: One time submission; *Affected Public:* Business or other for-profit, not-for-profit institutions and State, Local or Tribal Government; *Number of Respondents:* 80; *Total Annual Responses:* 110; *Total Annual Hours:* 3,400.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Referenced in HIPAA, Title 1, for the Group Market, Supporting Regulations at 45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, and 146.180, and forms/instructions; *Use:* The requirements of this information collection will ensure that group health plans and issuers in the group market comply with Health Insurance

Portability and Accountability Act of 1996 (HIPAA). These requirements include providing individuals with certificates of creditable coverage, notifying individuals about their status with respect to preexisting condition exclusions, and giving individuals the special enrollment rights to which they are entitled. In addition, this collection gives states and the Federal government the flexibility necessary to enforce these HIPAA requirements.; *Form Number:* CMS–R–206 (OMB#: 0938–0702); *Frequency:* Recordkeeping, third party disclosure and reporting: On occasion; *Affected Public:* Individuals or Households, Business or other for-profit, not-for-profit institutions and Federal, State, Local or Tribal Government; *Number of Respondents:* 2,800; *Total Annual Responses:* 37,002,217; *Total Annual Hours:* 446,679.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: June 1, 2006.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E6–8932 Filed 6–8–06; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–96, CMS–10168, CMS–R–143]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Emergency and Foreign Hospital Services—Beneficiary Statement of Canadian/Mexican Travel Claims and Supporting Regulations in 42 CFR 424.123; *Use:* The emergency services furnished to a beneficiary outside the U.S. are covered under Medicare if the foreign hospital meets the conditions for a domestic nonparticipating hospital in addition to one of the following: (1) If the emergency is considered to have occurred within the U.S. and the reason for departure for the U.S. was to obtain treatment; (2) if the emergency occurred in Canada while the beneficiary was traveling between Alaska and another State; (3) if the Canadian or Mexican hospital is closer, more accessible or adequately equipped to handle the illness or injury; or (4) services were rendered aboard a ship in an American port or on the same day the ship arrived or departed from that port. *Form Number:* CMS–R–96 (OMB#: 0938–0484); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions; *Number of Respondents:* 1,100; *Total Annual Responses:* 1,100; *Total Annual Hours:* 275.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Program: Complex Medical Review; *Use:* Complex medical review involves the application of clinical judgment by a licensed medical professional in order to evaluate medical records to determine whether an item or service is covered, and is reasonable and necessary. The information required under this collection is requested by Medicare contractors, and is requested of providers or suppliers submitting claims for payment from the Medicare program when data analysis indicates aberrant billing patterns which may present a vulnerability to the Medicare program. *Form Number:* CMS–10168 (OMB#: 0938–0969); *Frequency:* Recordkeeping and Reporting—As requested; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 1,169,683; *Total Annual Responses:* 2,900,000; *Total Annual Hours:* 966,666.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Physician Fee Schedule Geographic Practice Expense Index (GPCI); *Use:* This information collection is a survey of State insurance commissioners and malpractice insurers to acquire premium data for use in computing the malpractice component of the geographic practice cost index, a component of the geographic cost index as set forth in the Omnibus Reconciliation Act of 1989. The data collected in this information collection request will be used by CMS staff and outside contractors to update the Medicare physician fee schedule geographic practice expense index (MGPCI), the malpractice relative value units (MRVUs), and to supplement the updating of the malpractice component of the Medicare Economic Index (MEI). The MGPCI is one of the components of the GPCI, the others being physician work (net income), employee wages, office rents, medical equipment and supplies, and miscellaneous expenses. The MRVUs are one of the three components of the fee schedule, the others being physician work RVUs and practice expense RVUs. The GPCIs and fee schedule RVUs also used by other Federal agencies such as the Veteran's Administration and the Department of Labor. *Form Number:* CMS–R–143 (OMB#: 0938–0575); *Frequency:* Reporting—Every three years; *Affected Public:* State, Local or Tribal governments, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 150; *Total Annual Responses:* 50; *Total Annual Hours:* 150.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the

Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on August 8, 2006.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 1, 2006.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E6–8933 Filed 6–8–06; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Objective Work Plan (OWP), Objective Progress Report (OPR) and Project Abstract.

*OMB No.:* 0980–0204.

*Description:* The information collected by OWP is needed to properly administer and monitor the Administration for Native Americans (ANA) programs within the Administration for Children and Families (ACF). OWP assists applicants in describing their project's objectives and activities, and also assists independent panel reviewer's, ANA staff and the ANA Commissioner during the review and funding decision process. The information in OPR is being collected on a quarterly basis to monitor the performance of grantees and better gauge grantee progress. The standardized format will allow ANA to report results across all its program areas and flag grantees that may need additional training and/or technical assistance to successfully implement their projects. The Project Abstract provides crucial information in a concise format that it utilized by applicants, independent reviewers, ANA staff and the ANA Commissioner.

*Respondents:* Tribal Govt., Native non-profits, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| OWP | 500 | 1 | 3 | 1,500 |
| OPR | 275 | 4 | 1 | 1,100 |
| Project Abstract | 500 | 1 | .5 | 250 |

*Estimated Total Annual Burden Hours:* 2,850.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All request should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 6, 2006.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 06–5238 Filed 6–8–06; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0016]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Evaluation of Consumer-Friendly Formats for Brief Summary in Direct-to-Consumer Print Advertisements for Prescription Drugs: Study 1

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled '' Evaluation of Consumer-Friendly Formats for Brief Summary in Direct-to-Consumer Print Advertisements for Prescription Drugs: Study 1'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 15, 2005 (70 FR 74321), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0591. The approval expires on May 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: June 1, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–8981 Filed 6–8–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004F–0546]**

### Alltech, Inc.; Withdrawal of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2253) proposing that the food additive regulations be amended to provide for the safe use of polyurethane polymer coating in ruminant feed.

**FOR FURTHER INFORMATION CONTACT:** Isabel Pocurull, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, e-mail: *isabel.pocurull@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of January 13, 2005 (70 FR 2415), FDA announced that a food additive petition (FAP 2253) had been filed by Alltech, Inc., 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposed to amend the food additive regulations in part 573 (21 CFR part 573) to provide for the safe use of polyurethane polymer coating in ruminant feed. Alltech, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 571.7).

Dated: June 1, 2006.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E6–8982 Filed 6–8–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2006N–0229]**

### Carbinoxamine Products; Enforcement Action Dates

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention to take enforcement action against unapproved drug products containing carbinoxamine and persons who cause the manufacture of such products. Numerous drug products containing carbinoxamine are marketed without approved applications and many are inappropriately labeled for use in infants and young children. Drug products containing carbinoxamine are new drugs that require approved applications. One firm has approved applications to market products containing carbinoxamine. In addition, there is information showing that carbinoxamine should not be used in children under 2 years of age. Manufacturers who wish to market carbinoxamine products that do not already have FDA approval must obtain FDA approval of a new drug application (NDA) or an abbreviated new drug application (ANDA). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide.''

**DATES:** This notice is effective June 9, 2006.

For marketed, unapproved carbinoxamine-containing drug products that have a National Drug Code (NDC) number that is listed with FDA on the effective date of this notice (i.e., ''currently marketed products''), however, the agency intends to exercise its enforcement discretion to permit products properly marketed with those NDC numbers a brief period of continued marketing after June 9, 2006 as follows. Any firm manufacturing such an unapproved drug product containing carbinoxamine that is labeled for use in children less than 2 years of age or marketed as drops for oral administration may not manufacture that product on or after July 10, 2006. Any firm manufacturing any other such unapproved drug product containing carbinoxamine may not manufacture that product on or after September 7, 2006. Unapproved drug products containing carbinoxamine that are not currently marketed and listed with the agency on the date of this notice must, as of the date of this notice, have approved applications prior to their introduction into interstate commerce.

**ADDRESSES:** All communications in response to this notice should be identified with Docket No. 2006N–0229 and directed to the appropriate office listed as follows:

Regarding applications under section 505(j) of the Federal Food, Drug, and Cosmetic Act (the act)(21 U.S.C. 355(j)): Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

Regarding applications under section 505(b) of the act: Division of Pulmonary and Allergy Products, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993–0002.

All other communications: John Loh, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John Loh, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8965, e-mail: *John.Loh@FDA.HHS.GOV*.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

*A. The DESI Review*

When initially enacted in 1938, the act required that ''new drugs'' be approved for safety by FDA before they could legally be sold in interstate commerce. To this end, the act made it the sponsor's burden to show FDA that its drug was safe through the submission of an NDA. Between 1938 and 1962, if a drug obtained approval, FDA considered drugs that were identical, related, or similar (IRS)[1] to the approved drug to be ''covered'' by that approval, and allowed those IRS drugs to be marketed without independent approval.

In 1962, Congress amended the act to require that new drugs also be proven effective for their labeled indications, as well as safe. This amendment also required FDA to conduct a retrospective evaluation of the effectiveness of the drug products that FDA had approved as safe between 1938 and 1962. FDA contracted with the National Academy of Science/National Research Council (NAS/NRC) to make an initial evaluation of the effectiveness of over 3,400 products that were approved only for safety. The NAS/NRC reports for these drug products were submitted to FDA in the late 1960s and early 1970s. The agency reviewed and re-evaluated the reports and published its findings in **Federal Register** notices. FDA's

[1] Section 310.6(b)(1) (21 CFR 310.6(b)(1)) provides: ''An identical, related, or similar drug includes other brands, potencies, dosage forms, salts, and esters of the same drug moiety as well as of any drug moiety related in chemical structure or known pharmacological properties.''

administrative implementation of the NAS/NRC reports was called the Drug Efficacy Study Implementation (DESI). DESI covered the 3,400 products specifically reviewed by the NAS/NRCs, as well as the even larger number of IRS products that entered the market without FDA approval.

All drugs covered by the DESI review are ''new drugs'' under the act. If FDA's final DESI determination classifies a drug product as ineffective, that drug product and those IRS to it can no longer be marketed and are subject to enforcement action as unapproved new drugs. If FDA's final DESI determination classifies the drug product as effective for its labeled indications, the drug can be marketed provided it is the subject of an application approved for safety and efficacy. Those drug products with NDAs approved before 1962 for safety therefore require approved supplements to their original applications; IRS drug products require an approved NDA or ANDA, as appropriate. Furthermore, labeling for drug products classified as effective may contain only those indications for which the review found the product effective unless the firm marketing the product has received an approval for the additional indication(s).

*B. DESI Review of Carbinoxamine Products*

Carbinoxamine, often manufactured as carbinoxamine maleate (CM), is a histamine H1 receptor blocking agent (i.e., antihistamine) of the ethanolamine class.[2] This class exhibits antihistaminic, anticholinergic, and sedative properties. Certain single-ingredient carbinoxamine products are approved for treatment of various allergy symptoms. Carbinoxamine-containing products are often used for the treatment of colds and cough. However, the approved indications for carbinoxamine do not include treatment of either cold or cough. Carbinoxamine drug products often contain other active ingredients, such as decongestants or antitussives.

CM was initially marketed in the early 1950s. On June 22, 1953, FDA approved an NDA submitted by McNeil Laboratories (McNeil) to market single-ingredient CM in an immediate-release tablet form under the trade name Clistin (NDA 8–915); a tablet in ''repeat action'' form (an early timed-release technology), marketed as Clistin RA, was approved under the same NDA on June 15, 1954. On June 23, 1953, FDA approved McNeil's application to market single-ingredient CM in an elixir form under the trade name Clistin (NDA 8–955). On February 5, 1962, the agency approved McNeil's NDA 9–248 for a combination product, Clistin Expectorant, which contained CM, ammonium chloride, sodium citrate, potassium guaiacolsulfonate, and citric acid.

The Clistin products specifically, and CM generally, were reviewed under DESI. In the **Federal Register** of March 19, 1973 (DESI 6303, 38 FR 7265), FDA announced its conclusions regarding Clistin elixir and Clistin tablets, finding them to be ''new drugs'' that are effective for the following indications: (1) For the symptomatic treatment of seasonal and perennial allergic rhinitis, vasomotor rhinitis, allergic conjunctivitis due to inhalant allergens and foods; (2) for mild, uncomplicated allergic skin manifestations of urticaria and angioedema; (3) for the amelioration of the severity of allergic reactions to blood or plasma in patients with a known history of such reactions; (4) for dermographism; and (5) as therapy for anaphylactic reactions adjunctive to epinephrine and other standard measures after the acute manifestations have been controlled. In the **Federal Register** of March 19, 1982 (DESI 6514, 47 FR 11973), FDA announced that Clistin Expectorant was found to lack substantial evidence of effectiveness, because no well-controlled studies documented the effectiveness of its expectorant ingredients and because the combination of an antihistamine and an expectorant was found not to be a rational combination. Accordingly, FDA proposed to withdraw approval of NDA 9–248 (47 FR 11973 at 11974). In the **Federal Register** of April 30, 1982 (DESI 6303, 47 FR 18667), FDA reclassified Clistin RA as lacking substantial evidence of effectiveness because there was no evidence regarding its bioavailability and bioequivalence, as required for a timed-release dosage form of a safe and effective immediate-release drug, and proposed to withdraw approval of NDA 8–915. Because no hearing was requested regarding Clistin Expectorant and no further data were submitted regarding Clistin RA, FDA announced final withdrawal of approval of the NDAs pertaining to these products on May 18, 1982 (47 FR 21301), and July 29, 1983 (48 FR 34514), respectively. These notices also apply to drug products that are IRS to the carbinoxamine products reviewed under DESI.

*C. Status of Applications for CM Products*

In notices published in the **Federal Register** on April 5, 1985 (50 FR 13661), and March 2, 1994 (59 FR 9989), FDA withdrew approval of the NDAs for Clistin Elixir and Clistin Tablets, respectively, at the request of the application holder because the products were no longer marketed. In response to citizen petitions, FDA published notices in the **Federal Register** of May 21, 1998 (63 FR 27986), and April 10, 2000 (65 FR 18998), confirming that Clistin CM tablets and elixir, respectively, were not withdrawn from sale for reasons of safety or efficacy and that ANDAs that refer to the products as the listed drug could be approved by the agency.

Mikart, Inc. (Mikart), of Atlanta, GA, submitted ANDAs for single-ingredient CM products in 4-milligram (mg) tablets (ANDA 40–442) and 4 mg/5 milliliter solution form (ANDA 40–458), which were approved by FDA on March 19, 2003, and April 25, 2003, respectively, to treat the indications for which Clistin was found effective in the DESI review. The products are approved as prescription-only drug products. Currently, ANDAs 40–442 and 40–458 are the only approved applications for products containing carbinoxamine.

**II. Safety Concerns**

The agency is aware of 21 deaths since 1983 in children under 2 years of age associated with carbinoxamine-containing products. However, in most of those incidents, other active ingredients in the drugs or other factors aside from the drug could have been responsible for the death. Therefore, a causative relationship between exposure to carbinoxamine and death in these infants has not been established. Nevertheless, there is scientific support for the proposition that infants and young children may be more susceptible to experiencing drug-related adverse events, in part due to the normal immaturity of their metabolic pathways. Since the safety and efficacy of these drug products have not been studied in infants and young children, FDA is concerned about the risks of these products; the agency is especially concerned about those unapproved CM products that are being promoted for and may be associated with serious and life-threatening adverse outcomes in this vulnerable age group.

In addition, infants and young children administered combination products containing carbinoxamine are at increased risk of suffering an adverse event due to product misidentification or dispensing errors and unintentional

[2] Unless a specific salt of carbinoxamine is identified, the term ''carbinoxamine'' as used in this notice refers to carbinoxamine maleate, carbinoxamine tannate, and any related or similar drug product as described in § 310.6(b)(1) and (b)(2).

overdose. This is due to the existence of multiple strengths, different formulations, and different combinations of active ingredients in marketed, unapproved carbinoxamine-containing products. Moreover, the appropriate dosing of carbinoxamine has not been established for patients under 2 years of age. Dosing suggestions for this age range appear to be extrapolated from adult dosing based on body weight (i.e., mg/kilograms), which is not scientifically supported and can lead to significant dosing errors. Finally, in infants and young children administered these products, parents or caregivers may have difficulty identifying potentially serious or life-threatening adverse events. By the time the serious nature of the event is recognized, it may be too late to successfully intervene.

FDA is also concerned about the potential health risk associated with the use of other unapproved antihistamine and decongestant products in children under 2 years of age. We recognize that there is a similar lack of data regarding use of many of these products in infants and young children, and that variations in formulation and labeling of these products may also lead to errors and adverse events. FDA is evaluating the available scientific data regarding the use of these drugs in infants and young children and assessing appropriate regulatory approaches to best protect the public health. These kinds of products may be high priorities for future FDA enforcement action.

## III. Current Status of Carbinoxamine Products

Currently, the Mikart products covered by ANDA 40–442 and ANDA 40–458 are the only products containing carbinoxamine with approved applications (see section I.C of this document). However, numerous unapproved products containing carbinoxamine are on the market; some are single-ingredient products and others are combination products containing ingredients such as pseudoephedrine, phenylephrine, or dextromethorphan.

As of April 1, 2006, a total of 26 manufacturers had listed with FDA, under section 510(j) of the act (21 U.S.C. 360(j)), a total of 120 prescription drug products containing carbinoxamine. Other unapproved, unlisted carbinoxamine products are also on the market. Various firms distribute these products under various names. In addition to the indications found effective in the DESI review, these products are often used to relieve congestion and other cold symptoms, and some unapproved versions include treatment of cold symptoms as an indication in their labeling.

Many unapproved carbinoxamine products have labeling indicating that they may be used by children under 2 years of age and identify specific dosages for these young children, including some with specific dosages for infants as young as 1 to 3 months. Until recently, the approved carbinoxamine labeling indicated that the product was for use in individuals 1 year of age and older. To address the safety concerns described in this notice, the agency has approved a supplement submitted by Mikart modifying the approved labeling to specifically contraindicate use of the product in children under the age of 2 years. These changes will be reflected in future Mikart labels.

## IV. Legal Status

Under DESI 6303, as described previously, a drug product containing CM, alone or in combination with other drugs, is regarded as a new drug (21 U.S.C. 321(p)), and an approved application is required for marketing it. Because DESI drugs are ''new drugs,'' DESI-effective drugs need approval of an NDA, ANDA, or the required supplement. (See also *United States* v. *Sage Pharmaceuticals*, 210 F.3d 475 (5th Cir. 2000) (holding that products containing carbinoxamine are new drugs that require an approved application to be lawfully marketed).)

Thus, the agency intends to take enforcement action against any unapproved drug product that contains CM, whether as its sole active ingredient or in combination with one or more other active ingredients, and anyone who causes the manufacture of such products, as described in this notice. Under § 310.6, this notice also applies to drug products, and those who cause their manufacture, that are marketed without an approved application and that are related or similar to the approved CM products reviewed under DESI 6303, including, but not limited to, products that contain carbinoxamine tannate, alone or in combination with another active ingredient. It is the responsibility of every drug manufacturer to review this notice to determine whether the notice covers any drug product that the person manufactures. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of New Drugs and Labeling Compliance (see **ADDRESSES**). Requesting such an opinion does not excuse the person from complying with this notice in the time provided herein.

Although not required to do so by the Administrative Procedure Act, the act, or any rules issued under its authority, or for any other legal reason, FDA is providing this notice to firms that are manufacturing products containing carbinoxamine without an approved application that the agency intends to take enforcement action against such products and those who cause them to be manufactured. The lack of approval for a carbinoxamine product can result in seizure, injunction, or other judicial proceeding. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide'' (the Marketed Unapproved Drugs CPG), which describes how the FDA intends to exercise its enforcement discretion with regard to drugs marketed in the United States that do not have required FDA approval for marketing. Consistent with policies described in the Marketed Unapproved Drugs CPG, the agency does not expect to issue a warning letter or any other further warning to firms manufacturing unapproved products containing carbinoxamine prior to taking enforcement action.

As set forth in this notice, approval of an NDA under section 505(b) of the act, including section 505(b)(2), and 21 CFR 314.50 or an ANDA under section 505(j) of the act and 21 CFR 314.94 is required as a condition for manufacturing all carbinoxamine products. Because the NDAs for Clistin products were withdrawn at the request of the NDA-holder, the Mikart carbinoxamine products as described in ANDAs 40–442 and 40–458 have been designated as the reference listed drug products. Submission of an application does not excuse timely compliance with this notice. Following the effective dates listed in this notice, carbinoxamine products can only be manufactured after obtaining FDA approval.

Consistent with the priorities identified in the Marketed Unapproved Drugs CPG, the agency is taking action at this time against unapproved carbinoxamine products because: (1) Carbinoxamine is a drug with potential safety risks, as described in section II of this document; and (2) the agency has approved an application to market a carbinoxamine-containing product, and thus the continued marketing of unapproved carbinoxamine products is a direct challenge to the drug approval process. The agency also reminds firms that, as stated in the Marketed Unapproved Drugs CPG, any

unapproved drug marketed without a required approved drug application is subject to agency enforcement action at any time.

As described in the Marketed Unapproved Drugs CPG, the agency may, at its discretion, exercise its enforcement discretion and identify a period of time during which the agency will not initiate an enforcement action against a *currently marketed* unapproved drug on the grounds that it is an unapproved new drug, to preserve access to medically necessary drugs or ease disruption to affected parties, for instance. The agency notes that there are numerous marketed products that have approved applications or comply with an applicable over-the-counter drug monograph and that are used to treat conditions for which carbinoxamine is commonly used. Based on the facts discussed in this notice, and especially in light of the availability of these products and the special concerns regarding use of carbinoxamine products in children under 2 years of age, FDA intends to implement this notice as follows.

This notice is effective June 9, 2006. For marketed, unapproved carbinoxamine-containing products that have an NDC number that is listed with the agency on the effective date of this notice, however, the agency intends to exercise its enforcement discretion to permit products properly marketed with those NDC numbers a period of continued marketing after June 9, 2006 as follows. Any firm manufacturing such an unapproved drug product containing carbinoxamine that is labeled for use in children less than 2 years of age or marketed as drops for oral administration may not manufacture that product on or after July 10, 2006. Any firm manufacturing any other such unapproved drug product containing carbinoxamine may not manufacture that product on or after September 7, 2006.[3] The agency, however, does not intend to exercise its enforcement discretion as outlined in this paragraph if: (1) The manufacturer of an unapproved product covered by this notice is violating other provisions of the act or (2) it appears that a firm, in response to this notice, increases its manufacture of carbinoxamine drug products above its usual production volume during these periods.[4]

Drug manufacturers should be aware that the agency is exercising its enforcement discretion as described above *only* in regard to drug products containing carbinoxamine that are properly marketed under an NDC number listed with the agency on the date of this notice. Unapproved drug products containing carbinoxamine that are not currently marketed and listed with the agency on the date of this notice must, as of the date of this notice, have approved applications prior to their introduction into interstate commerce.

Firms that have discontinued manufacturing products covered by this notice may want to contact FDA to advise us that they are no longer manufacturing those products. Some firms may have previously discontinued the manufacturing of those products without removing them from the listing of their products under section 510(j) of the act. Other firms may discontinue manufacturing in response to this notice. Firms that wish to notify the agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product, including its NDC number, and stating that the product has been discontinued and will not be marketed again without FDA approval, to the following address: John Loh, Division of New Drugs and Labeling Compliance (see **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the act to reflect discontinuation of unapproved carbinoxamine products. FDA plans to rely on its existing records, the results of a subsequent inspection, or other available information when it initiates enforcement action.

In addition to discontinuing the manufacture of products that contain carbinoxamine, FDA cautions firms against reformulating their products into carbinoxamine-free unapproved new drugs that are marketed under the same name or substantially the same name (including a new name that contains the old name). In the Marketed Unapproved Drugs CPG, FDA states that it intends to give higher priority to enforcement actions involving unapproved drugs that are reformulated to evade an FDA enforcement action. In addition, reformulated products marketed under a name previously identified with a different active ingredient or combination of active ingredients have the potential to confuse health care practitioners and harm patients. Depending on the circumstances, these products may be considered misbranded under section 502(a) or 502(i) of the act (21 U.S.C. 352(a) and (i)).

FDA notes that the issuance of this notice does not in any way obligate the agency to issue similar notices or any notice in the future regarding marketed unapproved drugs. Our general approach in dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG. However, this CPG provides notice that any product that is being marketed illegally, and the persons responsible for causing the illegal marketing of the product, are subject to FDA enforcement action at any time.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 502 and 505 (21 U.S.C. 352 and 355)) and under authority delegated to the Deputy Commissioner for Policy (21 CFR 5.20).

Dated: June 6, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9033 Filed 6–8–06; 8:45 am]

**BILLING CODE 4160–01–S**

[3] If a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time. (See *United States* v. *Sage Pharmaceuticals*, 210 F.3d 475, 479–480 (5th Cir. 2000) (permitting the agency to combine all violations of the act in one proceeding, rather than taking action against a firm with multiple violations of the act in ''piecemeal fashion''.)

[4] We note that the agency does not intend to take action against, or require removal from the market of, carbinoxamine products already in the drug distribution chain on the dates identified in this notice. Such action or removal may be appropriate for other products in other circumstances.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004E–0011]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; CETROTIDE

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CETROTIDE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit

electronic comments to *http://www.fda.gov/dockets/ecomments*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount ofextension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CETROTIDE (cetrorelix acetate). CETROTIDE is indicated for the inhibition of premature luteinizing hormone surges in women undergoing controlled ovarian stimulation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CETROTIDE (U.S. Patent No. 5,198,533) from Administrators of the Tulane Educational Fund, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CETROTIDE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CETROTIDE is 2,103 days. Of this time, 1,815 days occurred during the testing phase of the regulatory review period, while 288 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: November 10, 1994. The applicant claims October 10, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 10, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 29, 1999. The applicant claims October 28, 1999, as the date the new drug application (NDA) for CETROTIDE (NDA 21–197) was initially submitted. However, FDA records indicate that NDA 21–197 was submitted on October 29, 1999.

3. *The date the application was approved*: August 11, 2000. FDA has verified the applicant's claim that NDA 21–197 was approved on August 11, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,491 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 8, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 6, 2006. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2006.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6–9031 Filed 6–8–06; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2003D–0478]**

### Guidance on Marketed Unapproved Drugs; Compliance Policy Guide; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide.'' The guidance describes how FDA intends to exercise its enforcement discretion with regard to drugs marketed in the United States that do not have required FDA approval for marketing. This document supersedes section 440.100 entitled ''Marketed New Drugs Without Approved NDAs or ANDAs'' (CPG 7132c.02) of the Compliance Policy Guide (CPG). It applies to any new drug required to have FDA approval for marketing, including new drugs covered by the over-the-counter (OTC) review.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self addressed adhesive label to assist the office in processing your request. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Sakineh Walther, Center for Drug Evaluation and Research (HFD–316), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8964.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the United States, as many as several thousand drug products are marketed illegally without required FDA approval. The manufacturers of these drugs have neither received FDA approval to legally market their drugs, nor have the drugs been marketed in accordance with a final OTC drug monograph. The drug approval and OTC monograph processes play an essential role in ensuring that all drugs are both safe and effective. Manufacturers of new drugs that lack required approval, including those that are not marketed in accordance with an OTC drug monograph, have not provided FDA with evidence demonstrating that their products are safe and effective. Therefore, FDA has an interest in taking steps to encourage the manufacturers of these products either to obtain the required evidence and comply with the approval provisions of the Federal Food, Drug, and Cosmetic Act or to remove the products from the market. FDA wants to achieve these goals without adversely affecting public health, imposing undue burdens on consumers, or unnecessarily disrupting the market.

In general, in recent years, FDA has employed a risk-based enforcement approach to marketed unapproved drugs that includes efforts to identify illegally marketed drugs, prioritization of those drugs according to potential public health concerns or other impacts on the public health, and subsequent regulatory followup. Some of the specific actions the agency has taken have been precipitated by evidence of safety or effectiveness problems that has come to our attention either during inspections or through outside sources.

## II. The Guidance

FDA is announcing the availability of a guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide.'' In the **Federal Register** of October 23, 2003 (62 FR 60702), FDA announced the availability of a draft guidance of the same title and gave interested persons an opportunity to submit comments by December 22, 2003. In response to comments received, the agency revised the guidance to include editorial corrections and clarification of policies, including clarification of when and how we intend to exercise our enforcement discretion. The revisions also clarify the discussion of ''grandfather'' status and expressly state that no part of the guidance is a finding as to the legal status of any particular drug product.

This document supersedes section 440.100 entitled ''Marketed New Drugs Without Approved NDAs or ANDAs'' (CPG 7132c.02) of the CPG. It applies to any new drug required to have FDA approval for marketing, including new drugs covered by the OTC review.

The goals of the guidance are to address the following issues: (1) Clarify for FDA personnel and the regulated industry how the FDA intends to exercise its enforcement discretion regarding unapproved drugs and (2) emphasize that illegally marketed drugs must obtain FDA approval.

The guidance reflects the agency's desire to address these issues with policies that are predictable, reasonable, and supportive of the public health. The agency's approach encourages companies to comply with the drug approval process, but it also seeks to minimize disruption to the marketplace and to safeguard consumer health when there are potential safety risks. The guidance explains that FDA will continue to give priority to enforcement actions involving unapproved drugs with potential safety risks, that lack evidence of effectiveness, and that constitute health fraud. It also explains how the agency intends to address those situations in which a firm obtains FDA approval to sell a drug that other firms have long been selling without FDA approval. It confirms that the agency will continue longstanding policies regarding firms making unapproved drugs who are violating the act in other respects and clarifies how the agency plans to address formulation changes made to evade an enforcement action.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: June 6, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6–9032 Filed 6–8–06; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

*DNA Influenza Vaccine*

*Description of Technology:* The FDA is pleased to announce a single vector DNA vaccine against influenza as available for licensing. The single vector

expresses both hemagglutinin (HA) and matrix (M) proteins, generating both humoral and cellular immune responses. The vaccine candidate completely protected mice against homologous virus challenge and significantly improved survival against heterologous virus challenge. A robust and reliable vaccine supply is widely recognized as critical for seasonal or pandemic influenza preparedness. The advantages offered by this vaccine make it an excellent candidate for further development.

*Advantages:* (1) DNA vaccines are easy to produce and store; (2) Vaccine candidate improved survival against heterologous virus challenge; (3) No risk of reversion to pathogenic strain as with live-attenuated virus vaccines; (4) Can be administered to immuno-compromised individuals, increasing potential market size; (5) HA and M proteins encoded by single vector, ensuring uniform delivery of immunogen; (6) More efficient to boost synergistic effects on both HA and M specific immune responses than a mixture of individual plasmids; (7) M protein not subject to antigenic drift, which allows advanced manufacturing and overcomes the need for strain monitoring; (8) DNA vaccines elicit cellular immune response, essential for efficient virus clearance.

*Inventors:* Zhiping Ye *et al.* (FDA).

*Patent Status:* U.S. Provisional Application No. 60/786,747 filed 27 Mar 2006 (HHS Reference No. E–300–2005/0–US–01).

*Licensing Status:* Available for exclusive or non-exclusive licensing.

*Licensing Contact:* Susan Ano, Ph.D.; 301/435–5515; *anos@mail.nih.gov.*

*Collaborative Research Opportunity:* The Food and Drug Administration is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact the inventor, Zhiping Ye at 301/435–5197 or Beatrice Droke at 301/827–7008 for more information.

**Method for Improved Phase Contrast MRI Resolution**

*Description of Technology:* This invention is a method to significantly improve the temporal or spatial resolution in a phase contrast MRI (PC–MRI) study. In general, conventional PC–MRI involves encoding the motion information of spins in the phase of the image. The velocity of the spin motion can be extracted by calculating the phase difference between two consecutive images acquired with two different bipolar encoding gradients. Two scans are required in order to reconstruct flow velocity data, resulting in an increase in image acquisition and reconstruction time by a factor of two compared to that of a standard anatomical image. As a means of reducing the PC–MRI scan time, the inventors propose a method of acquiring only a fraction of k-space data. The k-space is sampled using an under-sampled spiral or single projection, radial scheme. Subsequently, the two data sets in the PC–MRI are subtracted to extract the motion information from undersampled data without any aliasing artifacts. This method of partial-field of view acquisition and reconstruction of PC-MRI results in an increased temporal resolution, while maintaining high spatial resolution. The increase in image acquisition efficiency could be used to increase the spatial resolution while maintaining the temporal resolution.

*Inventors:* Reza Nezafat *et al.* (NHLBI).

*Patent Status:* U.S. Patent Application No. 11/227,406 filed 14 Sep 2005 (HHS Reference No. E–134–2005/0-US–01).

*Licensing Status:* Available for non-exclusive or exclusive licensing.

*Licensing Contact:* Chekesha Clingman, PhD; 301/435–5018; clingmac@mail.nih.gov.

**Image Guided Systems and Methods for Organ Viability Assessment**

*Description of Technology:* The number of patients for organ transplants continues to grow, without an increase in the number of organs available for transplant. This has increased interest in transplanting organs from non-traditional sources, such as donations after cardiac death. However, there are currently no methods to objectively measure the effects of resuscitation and ischemia damage on organ viability.

The present invention relates to systems and methods for evaluating the status and characterization of organs, determining their suitability for transplants, as well as restoring the viability of organs intended for transplants. Particularly, this method is based on using optical (infrared or near infrared) imaging to guide the resuscitation of the donor organs and predict the recovery of grafts challenged with several hours of preservation. This method allows for localization of ischemic areas and guiding targeted resuscitation of the organ.

For example, the inventors have shown that by combining a kidney reperfusion system with infrared imaging equipment, it is possible to differentiate between ischemic and non-ischemic tissue and restore the viability of the kidney. This method can potentially be used to evaluate the viability of any body part or organ intended for transplantation, such as extremities, heart, lungs, and liver. This approach can lead to the utilization of donation-after-cardiac-death organs and can substantially increase the donor pool of organs. Hence, this new method can identify organs that may be considered unsuitable for transplant, and help prevent transplantation of organs whose function may be considered impaired, as well as help guide resuscitation efforts.

*Inventors:* Alexander M. Gorbach (ORS), Allan D. Kirk (NIDDK), Eric Elster (NIDDK).

*Patent Status:* U.S. Provisional Application No. 60/778,785 filed 03 Mar 2006 (HHS Reference No. E–098–2005/0–US–01).

*Licensing Status:* Available for non-exclusive or exclusive licensing.

*Licensing Contact:* Chekesha Clingman, PhD; 301/435–5018; *clingmac@mail.nih.gov.*

Dated: June 5, 2006.

**David R. Sadowski,**

*Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E6–9018 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the rant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Small Grants for Behavioral Research in Cancer Control.

*Date:* June 26–27, 2006.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review an evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., 7149, Bethesda, MD 20892. (301) 594–1286. *peguesj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.382, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5261 Filed 6–8–06; 8:45am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group; Subcommittee J—Population and Patient-Oriented Training.

*Date:* June 27–28, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

*Contact Person:* Ilda M. McKenna, PhD, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892. (301) 496–7481. *mckennai@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5262 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the pubic as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

*Date:* July 10–11, 2006.

*Time:* July 10, 2006, 7 p.m. to 11 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Time:* July 11, 2006, 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Brian E. Wojcik, PhD, Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2114, Bethesda, MD 20892. (301) 496–7628. *wojcikb@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsc.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5263 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Heart, Lung, and Blood Initial Review Group; Clinical Trials Review Committee.

*Date:* June 26, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton BWI Airport, 7032 Elm Road, Baltimore, MD 21240.

*Contact Person:* Patricia A. Haggerty, PhD, Section Chief, Clinical Studies and Training Scientific Review Group, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, 6701 Rockledge Drive, Room 7194, MSC 7924, Bethesda, MD 20892. (301) 435–0288. *haggertp@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 5, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5269 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Initial Review Group, Biological Aging Review Committee.

*Date:* June 6, 2006.

*Time:* 12 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contact Person:* Alessandra M. Bini, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301–402–7708. *binia@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, AD Drug Studies.

*Date:* June 13, 2006.

*Time:* 1 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. 301–496–7705. *hsula@exmur.nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Pituitary-Gonadal Axis.

*Date:* June 20–21, 2006.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301–402–7700. *rv23r@nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Health Care Economics.

*Date:* June 21, 2006.

*Time:* 12 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contact Person:* Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Bethesda, MD 20814. (301) 402–7703. *rolfj@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Neural and Behavioral Studies in Aging.

*Date:* June 26, 2006.

*Time:* 1 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20982 (Telephone Conference Call).

*Contact Person:* Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892. (301) 496–7705. *exmur.hsul@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Aging and Sleep Meeting.

*Date:* July 10, 2006.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contract Person:* Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.( 301 ) 402–7701. *nakhaib@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Aging and Apoptosis Meeting.

*Date:* July 11, 2006.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

*Contract Person:* Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 402–7701. *nakhaib@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Alzheimer's Disease and Oxidative Stress.

*Date:* July 11, 2006.

*Time:* 3 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).

*Contract Person:* William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. (301) 402–7704. *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging, Research, National Institutes of Health, HHS)

Dated: June 1, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5257 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; MBRS Initiative for Maximizing Student Diversity.

*Date:* June 26–27, 2006.

*Time:* 8:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892. (301) 594–2771. *johnsonrh@nigms.nih.gov.*

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Postdoctoral Research and Training.

*Date:* June 26, 2006.

*Time:* 2:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute of General Medical Sciences, 45 Center Drive—Room 3AS–13, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Brian R. Pike, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. (301) 594–3907. *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos: 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5260 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PA 04–119 P01 Biodefense & Emerging Infectious Disease Research Opportunities.

*Date:* June 28, 2006.

*Time:* 12:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3120, Bethesda, MD 20817. (Telephone Conference Call).

*Contact Person:* Lynn Rust, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. (301) 402–3938. *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5264 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Network on Antimicrobial Resistance in Staphylococcus Aureus (NARSA).

*Date:* June 29, 2006.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. (301) 496–3528. *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5270 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* June 12, 2006.

*Time:* 1 p.m. to 3.30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* NIH/NIAMS, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Yan Z. Wang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892. (301) 594–4957. *wangy1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 5, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5271 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 23, 2006, 11 a.m. to June 23, 2006, 6 p.m., Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on May 16, 2006, 71 FR 28363–28365.

The meeting will be held at the Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009. The meeting date and time remain the same. The meeting is closed to the public.

Dated: June 1, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5254 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular Aspects of Diabetes and Obesity Study Section, June 7, 2006, 7 p.m. to June 9, 2006, 5 p.m., Doubletree Hotel Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814 which was published in the **Federal Register** on May 16, 2006, 71 FR 28365–28367.

The meeting will be held June 8, 2006, 8 a.m. to June 9, 2006, 5 p.m. at the Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814. The meeting is closed to the public.

Dated: June 1, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5255 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular Genetics A Study Section, June 8, 2006, 8 a.m. to June 9, 2006, 3 p.m., Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA, 22202 which was published in the **Federal Register** on April 25, 2006, 71 FR 23929–23931.

The meeting will be held at the Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 1, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5256 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neuroinformatics and Neuroimaging.

*Date:* June 21, 2006.

*Time:* 8 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

*Contact Person:* Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. (301) 435–3009. *elliotro@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neuroinformatics and Neuroimaging–2.

*Date:* June 21, 2006.

*Time:* 8 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

*Contact Person:* Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142 MSC 7850, Bethesda, MD 20892. (301) 435–1239. *guthriep@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Ion Channels and Vetricular Fibrillation.

*Date:* June 26, 2006.

*Time:* 3 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892. (301) 451–1375. *ot3d@nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.

*Date:* June 26–27, 2006.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Swissotel Hotel, 323 E. Wacker Drive, Neuchatel–4th floor, Chicago, IL 60601.

*Contact Person:* Hiliary D, Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892. (301) 594–6377. *sigmonh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

*Date:* June 27, 2006.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892. (301) 451–4487. *choe@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neurogenetics and Neurogenomics.

*Date:* June 29, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Willard Intercontinental Washington DC, 1401 Pennsylvania Avenue NW., Washington, DC 20004.

*Contact Person:* Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. (301) 435–3009. *elliotro@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Immunology Fellowships and AREA.

*Date:* June 29–30, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Paek-Gyu Lee, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892. (301) 402–7391. *leepg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bacterial Detection, Food Sanitation, and Microbial Sterilization.

*Date:* July 6, 2006.

*Time:* 8 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

*Contact Person:* Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692. (301) 435–1149. *elzaataf@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, BDCN Fellowship Special Emphasis Panel.

*Date:* July 6–7, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892. (301) 435–1259. *nadis@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.

*Date:* July 6–7, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301–435–1259. *rubertm@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.

*Date:* July 6–7, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

*Contact Person:* Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892. (301) 435–1506. *bautista@csr.nih.gov.*

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Tissue Engineering Study Section.

*Date:* July 6–7, 2006.

*Time:* 8 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jean Dow Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892. (301) 435–1743. *sipej@csr.nih.gov.*

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Vector Biology Study Section.

*Date:* July 6–7, 2006.

*Time:* 8:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, Historic Fell's Point, 888 South Broadway, Baltimore, MD 21231.

*Contact Person:* John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892. (301) 435–2398. *pughjohn@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, HOP SBIR Applications.

*Date:* July 6–7, 2006.

*Time:* 8:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hamilton Crowne Place, 1001 14th Street, NW., Washington, DC 2005.

*Contact Person:* Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. (301) 435–1017. *helmersk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Viral and Eukaryotic Special Emphasis Panel.

*Date:* July 6–7, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Soheyla Saadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892. (301) 435–0903. *saadisoh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Evolution of Disease.

*Date:* July 6, 2006.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892. (301) 435–1219. *currieri@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Memory and Executive Control.

*Date:* July 7, 2006.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892. (301) 435–1507. *niw@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Protease in Vascular Remodeling and Thrombotic Diseases.

*Date:* July 7, 2006.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892. (301) 435–1195. *sur@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 1, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5258 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 26, 2006, 8 a.m. to June 26, 2006, 5 p.m., Double Tree Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814 which was published in the **Federal Register** on May 23, 2006, 71 FR 29660–29661.

The meeting will be held at the Clarion Hotel Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814. The meeting date and time remain the same. The meeting is closed to the public.

Dated: June 1, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5259 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular and Molecular Biology of the Kidney Study Section, June 12, 2006, 8 a.m. to June 13, 2006, 1 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814 which was published in the **Federal Register** on May 16, 2006, 71 FR 28365–28367.

The meeting will be held at the Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5266 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

*Date:* June 13, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892. (301) 435–1741. *pannierr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cognition and Perception Reviews.

*Date:* June 23, 2006.

*Time:* 8 a.m. to 9 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

*Contact Person:* Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892. (301) 435–2309. *pluded@csr.nih.gov*.

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Clinical and Integrative Cardiovascular Sciences Study Section.

*Date:* July 10–11, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892. (301) 435–1850. *dowellr@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR/STTR ONC–R (11).

*Date:* July 10, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Bo Hong, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892. 301–435–5879. *hongb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Delivery Systems and Nanotechnology.

*Date:* July 10, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7849, Bethesda, MD 20892. (301) 435–2810. *zullost@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Drug Development and Therapeutics/SBIR.

*Date:* July 10, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892. 301–435–1716. *petrakoe@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Collaboration with NCBCs.

*Date:* July 10, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

*Contact Person:* Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892. (301) 435–2211. *klosekm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR/STTR Early Childhood Behaviors and Adolescent/Adult Addictions.

*Date:* July 10, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Helix Hotel, 1430 Rhode Island Ave., NW., Washington, DC 20005.

*Contact Person:* Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892. 301–594–3139. *gutkincl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies: Members Conflicts.

*Date:* July 10, 2006.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 435–3554. *durrantv@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices and Neuroprosthetics/Brain Disorders and Clinical Neuroscience / SBIR.

*Date:* July 10–11, 2006.

*Time:* 8 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Doubletree Hotel, 1515 Rhode Island Ave., NW., Washington, DC 20005.

*Contact Person:* Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. 301–435–0902. *charlesvi@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neurotechnology and Neuroengineering.

*Date:* July 11, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, P01 Grant Application.

*Date:* July 11, 2006.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892. 301–435–3565. *svedam@csr.nih.gov.*

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group, Microscopic Imaging Study Section.

*Date:* July 11, 2006.

*Time:* 8 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1115, MSC 7849, Bethesda, MD 20892. 301–435–2786. *shonatr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Oral Microbiology: ODCS Member Conflict Panel.

*Date:* July 11, 2006.

*Time:* 11:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892. 301–451–1327. *tthyagar@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hearing, Cellular/Molecular.

*Date:* July 11, 2006.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. 301–435–1250. *bishopj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5267 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Surgery, Anesthesiology and Trauma Study Section, June 14, 2006, 1 p.m. to June 15, 2006, 3 p.m., DoubleTree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on May 12, 2006, 71 FR 27740.

The meeting will be held at the Clarion Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 2, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5268 Filed 6–8–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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 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.

**Proposed Project: Drug and Alcohol Services Information System (DASIS)—(OMB No. 0930–0106)—Revision**

The request for OMB approval will be a supplement to the full DASIS request approved on November 8, 2005, and will be submitted in accordance with the Terms of Clearance in that 2005 OMB Notice of Action. The supplemental submission will request extension and revision of DASIS, including approval to revise and conduct the National Survey of Substance Abuse Treatment Services

(N–SSATS) following a pretest of the 2007 questionnaire changes. The request will revise only the N–SSATS-related portion of the DASIS data collection. There will be no changes to the other DASIS components.

The DASIS consists of three related data systems: The Inventory of Substance Abuse Treatment Services (I–SATS ); the National Survey of Substance Abuse Treatment Services (N–SSATS), and the Treatment Episode Data Set (TEDS). The I–SATS includes all substance abuse treatment facilities known to SAMHSA. The N–SSATS is an annual survey of all substance abuse treatment facilities listed in the I–SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly-funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment.

The request for OMB approval will include changes to the N–SSATS survey and the Mini-N–SSATS. The Mini-N–SSATS is a procedure for collecting services data from newly identified facilities between main cycles of the N–SSATS survey and will be used to improve the listing of treatment facilities in the on-line treatment facility Locator. The request will include the following changes to the 2007 N–SSATS questionnaire, as refined by the pretest findings: modification of the treatment categories to better reflect the practices and terminology currently used in the treatment field; modification of the detoxification question, including the addition of a follow-up question on whether the facility uses drugs in detoxification and for which substances; the addition of questions on treatment approaches and clinical practices; the addition of a question on quality control procedures used by the facility; and, the addition of a question on whether the facility accepts ATR vouchers and how many annual admissions were funded by ATR vouchers. The request will also include changes to the Mini-N–SSATS questionnaire to add a question on treatment approaches, to modify the treatment categories to reflect more current practices and terminology, and to ask whether the facility accepts ATR vouchers. The remaining sections of the N–SSATS questionnaires will remain unchanged except for minor modifications to wording. The request for OMB approval will include a change in burden hours to include the full three years of N–SSATS and mini-N–SSATS data collection, now that the N–SSATS pretest has been completed. Also, the burden hours for the pretest are being dropped.

No significant changes are expected in the other DASIS activities.

The estimated annual burden for the DASIS activities is as follows:

**Note** —only the estimates for N–SSATS-related activities are changing.

| Type of respondent and activity | Number of respondents | Responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| States: | | | | |
| TEDS Admission data | 52 | 4 | 6 | 1,248 |
| TEDS Discharge data | 40 | 4 | 8 | 1,280 |
| TEDS Discharge crosswalks | 5 | 1 | 10 | 50 |
| I–SATS Update | 56 | 67 | .08 | 300 |
| State Subtotal[1] | 56 | | | 2,878 |
| Facilities: | | | | |
| I–SATS update | 100 | 1 | .08 | 8 |
| N–SSATS questionnaire | 17,000 | 1 | .67 | 11,390 |
| Augmentation screener | 1,000 | 1 | .08 | 80 |
| Mini-N–SSATS | 700 | 1 | .42 | 294 |
| Facility Subtotal | 19,000 | | | 11,772 |
| Total | 19,056 | | | 14,650 |

[1] The burden for the listed State activities is unchanged from the currently approved level. Only the burden for N–SSATS and Mini-N–SSATS is changing, and the burden for the N–SSATS pretest, which is now complete, has been removed.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 1, 2006.

**Anna Marsh,**

*Director, Office of Program Services.*

[FR Doc. E6–8989 Filed 6–8–06; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed information collection activities. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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 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.

**Proposed Project: National Outcome Measures (NOMs) for Consumers Receiving Mental Health Services—New**

The mission of SAMHSA's Center for Mental Health Services (CMHS) is to treat mental illnesses by promoting mental health and by preventing the development or worsening of mental illness when possible. Congress created CMHS to bring new hope to adults who have serious mental illnesses and to children with serious emotional disorders.

The purpose of this proposed data activity is to promote the use of consistent measures among CMHS grantees and contractors funded through the Program of Regional and National Significance (PRNS) and Children's Mental Health Initiative (CMHI) budget lines. The common National Outcome Measures recommended by CMHS are a result of extensive examination and recommendations, using consistent criteria, by panels of staff, experts, and grantees. Wherever feasible, the proposed measures are consistent with or build upon previous data development efforts within CMHS. This activity will be organized to reflect and support the domains specified for SAMHSA's NOMs. The use of consistent measurement for specified outcomes across CMHS-funded projects will improve the ability of SAMHSA and CMHS to respond to the Government Performance and Results Act (GPRA) and the Office of Management and Budget Program Assessment Rating Tool (PART) evaluations.

A separate data collection form will be used for adults and children but will be parallel in design. NOMs data will be collected at baseline with a periodic reassessment being conducted every six months as long as the client remains in treatment. The proposed data collection will cover eight of the ten domains in NOMs. The Cost-Effectiveness and Evidence-Based Practices domains are under development. Completion of these domains will require input from other sources and is anticipated for Summer 2007.

| Domain | Adult | | Child | |
|---|---|---|---|---|
| | Source | Number of items | Source | Number of items |
| Access/Capacity | SAMHSA Standardized Question | 4 | SAMHSA Standardized Question 4 | 4 |
| Functioning | Mental Health Statistics Improvement Program (MHSIP). | 8 | Youth Services Survey for Families (YSS–F) | 6 |
| Stability in Housing | SAMHSA Standardized Question | 1 | SAMHSA Standardized Question 2 | 2 |
| Education and Employment. | SAMHSA Standardized Question | 3 | SAMHSA Standardized Question 2 | 2 |
| Crime and Criminal Justice. | SAMHSA Standardized Question | 1 | SAMHSA Standardized Question 1 | 1 |
| Perception of Care | MHSIP | 14 | YSS–F | 13 |
| Social Connectedness | MHSIP | 4 | YSS–F | 4 |
| Retention[1] | SAMSHA Standardized Question | 1 | SAMSHA Standardized Question | 1 |
| Total Number | | 36 | | 33 |

In addition to questions asked of clients related to the NOMs domains, programs will be required to abstract information from client records on the services received.

Following is the estimated annual response burden for this effort.

| Type of response | Number of respondents | Data collection per respondents | Hours per data collection | Total hour burden |
|---|---|---|---|---|
| Client Baseline Assessment | 23,575 | 1 | 0.333 | 7,858 |
| Periodic Client Reassessment | 8,225 | 1 | 0.333 | 2,742 |
| Chart Abstraction | 23,575 | 1 | 0.1 | 2,358 |
| Total | 23,575 | | | 12,958 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1045, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by August 8, 2006.

Dated: June 1, 2006.

**Anna Marsh,**

*Director, Office of Program Services.*

[FR Doc. E6–8990 Filed 6–8–06; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2006–0023]**

## Policy Directorate; Homeland Security Advisory Council

**AGENCY:** Policy Directorate, Department of Homeland Security.

[1] Retention is measured at the first interview for a continuing consumer (baseline), follow-up interview, and discharge interview. The survey was modified to include an item in Section K (Services Received) where the provider will indicate whether the consumer received Inpatient Psychiatric Care within the past 6 months; specifically, item 3 under Treatment Services.

**ACTION:** Notice of Partially Closed Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Advisory Council (HSAC) will hold a meeting for purposes of receiving new taskings and briefings and holding member deliberations. This meeting will be partially closed.

**DATES:** Monday, June 26, 2006.

**ADDRESSES:** The open portions of the meeting for the purpose of receiving future taskings and discussion listed above will be held at the St. Regis Hotel, at 923 16th and K Streets, NW., Washington, DC, in the Potomac Room, lower lobby level from 11 a.m. to 1 p.m. The closed portions of the meeting will be held in the Mt. Vernon Room, lower lobby level, and the United States Secret Service Headquarters from 8:30 a.m. to 11 a.m, and then again from 1 p.m. to 4 p.m.

If you desire to submit written comments, they must be submitted by June 19, 2006. Comments must be identified by DHS–2006–0023 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *HSAC@dhs.gov*. Include docket number in the subject line of the message.
- Fax: (202) 772–9718.
- Mail: Kezia Williams, Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and DHS–2006–0023, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kezia Williams, Homeland Security Advisory Council, Washington, DC 20528, (202) 205–1433, *HSAC@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** At the upcoming meeting, the HSAC will focus on the future of terrorism; threat assessment for the next five years, and creating a common culture within the Department of Homeland Security. The HSAC will also hold deliberations and discussions among HSAC members, including discussions regarding administrative matters.

The closed portion of the meeting will include discussions on building a common culture at the Department as well as on the future of terrorism and how the department should respond and prepare the public. In those discussions various speakers from the Department and outside will discuss the current trends in terrorism as well as how various companies and organizations have created a common culture. Therefore certain trade secrets are likely to be discussed as well as how the Federal government investigates and tracks the patterns of terrorism.

*Public Attendance:* A limited number of members of the public may register to attend the public session on a first-come, first-served basis per the procedures that follow. Security requires that any member of the public who wishes to attend the public session provide his or her name and date of birth no later than 5 p.m. E.S.T., Monday, June 19, 2006, to Kezia Williams or an Executive Staff Member of the HSAC via e-mail at *HSAC@dhs.gov* or via phone at (202) 205–1433. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 10:50 a.m.

*Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Kezia Williams as soon as possible.*

*Basis for Closure:* In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*), I have determined that portions of this HSAC meeting will be closed. At the closed portions of the meeting the committee will be addressing specific security and infrastructure vulnerabilities, and these discussions are likely to include: trade secrets and commercial or financial information that is privileged or confidential; investigative techniques and procedures; and matters that for which disclosure would likely frustrate significantly the implementation of proposed agency actions. Accordingly, I have determined that these portions of the meeting must be closed as consistent with the provisions of 5 U.S.C. 552b(c)(4), (7)(E), and (9)(B).

Dated: June 5, 2006.

**Michael Chertoff,**

*Secretary.*

[FR Doc. 06–5253 Filed 6–6–06; 2:14 pm]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Intent To Request Approval From OMB of One New Public Collection of Information: TSA Web Site Usability Development: Focus Groups and Online Survey

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on a new information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act.

**DATES:** Send your comments by August 8, 2006.

**ADDRESSES:** Comments may be mailed or delivered to Katrina Wawer, Attorney-Advisor, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

**FOR FURTHER INFORMATION CONTACT:** Katrina Wawer at the above address, or by telephone (571) 227–1995; or Yolanda Clark, Director and Chief Spokesperson, or Philip Joncas, Office of Strategic Communications and Public Information, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220, or call (571) 227–2747.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, effectiveness, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

**Purpose of Data Collection**

In order to provide a useful public Web site, TSA seeks to administer two data collections to obtain feedback concerning the usability, content, focus and satisfaction of passengers who use TSA's Web site, titled ''Web site Focus Groups'' and ''Web site Online Survey.'' TSA will use the data collected through these collection methods to deliver effective and engaging information to meet customers' needs and continuously improve TSA's Web site usability.

**Description of Data Collection**

TSA intends to collect data via the following instruments:

(1) *Web site Focus Groups.* TSA intends to conduct focus groups in a metropolitan area in each of TSA's three regions: East, Midwest, and West. TSA, through consultants, will administer the usability focus groups, one per region, by having volunteers use computers to access the TSA Web site under close supervision. Volunteers will provide both verbal and written feedback to the individuals administering the session. Participants will be selected randomly, at different travel times, from different locations, so that the sample includes individuals traveling throughout the day.

Participation will be voluntary. TSA Headquarters will supply an independent, paid consultant to lead the user focus groups. These consultants will handle the data collected during focus groups and provide TSA with analysis of the results in order to ensure the results are free of bias and present a truly accurate representation of the focus group responses. A TSA representative will be present at each focus group to monitor the consultants responsible for conducting the focus groups and synthesizing the results, and to ensure the data collection is conducted in a professional manner and follows best practices for conducting focus group research.

Focus groups will be conducted at various dates, times, and locations to provide a general representation of all customer preferences and not one particular group or subset of the population. TSA intends to conduct 15 user focus groups annually, each with a target of 10 total participant hours, based on an estimate of a 1 hour burden per respondent. TSA estimates a maximum total annual burden of 150 hours (10 participants times 15 focus group sessions equals 150 hours total). There is no burden on those who choose not to be involved in the focus groups.

(2) *Web site Online Survey.* TSA also will conduct voluntary Web site surveys to collect data for improved content and usability. The surveys will be available via the TSA Web site (*http://www.tsa.gov*). Participation by Web site users will be voluntary. TSA Headquarters will provide a list of approximately 20 approved questions, from which the TSA Web Director will configure an online survey available to Web site users who choose to provide their feedback.

Surveys will comprise an approximate five-minute burden per respondent and an aggregate burden of 34 hours per year, based on an estimated 400 online surveys voluntarily completed per year (400 surveys times 5 minutes per survey equals 2000 minutes total, which is then divided by 60 minutes, resulting in 34 hours total). There is no burden on users who choose not to participate.

**Use of Results**

TSA Headquarters will use the focus group and survey results to evaluate and improve Web site content and usability, both via formal, rigorous usability performance measurement, and via targeted responses to problems and areas of opportunity that are identified. TSA senior management, the TSA Web Director in the Office of Strategic Communication and Public Affairs, and the Office of the Chief Information Officer, will use the results of the Web site Focus Groups and the Web site Online Survey to create a Web site usability and utility index, *i.e.*, a summary of performance measures. TSA will use this index to evaluate the impact of Web site content and layout as TSA makes further strides to address public demand for convenient access to information via the Web.

Issued in Arlington, Virginia, on June 5, 2006.

**Peter Pietra,**

*Director, Privacy Policy and Compliance.*

[FR Doc. E6–9020 Filed 6–8–06; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5045–N–23]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**DATES:** *Effective Date:* June 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 1, 2006.

**Mark R. Johnson,**

*Acting Deputy Assistant Secretary for Special Needs.*

[FR Doc. 06–5147 Filed 6–8–06; 8:45 am]

**BILLING CODE 4210–67–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–310–1310–PB–24 1A]**

### Extension of Approved Information Collection, OMB Control Number 1004–0137

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from oil and gas well operators concerning operations performed on each well. We collect form and nonform information to determine whether BLM may approve proposed operations and to enable us to monitor compliance with terms and conditions of approved operations.

**DATES:** You must submit your comments to BLM at the address below on or before August 8, 2006. BLM will not necessarily consider any comments received after the above date.

**ADDRESSES:** You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *comment_washington@blm.gov.* Please include ''ATTN: 1004–0137'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** You may contact Barbara Gamble, Fluid Minerals Group, on (202) 425–03389 (Commercial of FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

**SUPPLEMENTARY INFORMATION:** 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information has practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), as amended; the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351–359), as amended; the various Indian leasing acts; the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), as amended; and other environmental laws govern onshore oil and gas operations. BLM's implementing regulations are 43 CFR part 3160.

(1) Section 43 CFR 3162.3–1 requires oil and gas well operators to submit an Application for Permit to Drill (Form 3160–3) for each well at least 30 days before any drilling operations or surface disturbances are commenced.

(2) Section 43 CFR 3162.4–1(b) requires oil and gas well operators to submit a Well Completion or Recompletion Report and Log (Form 3160–4) within 30 days after well completion.

(3) Section 43 CFR 3162.3–2 requires oil and gas operators on Federal and restricted Indian lands to submit Form 3160–5, Sundry Notices and Reports on Wells, in order to obtain authority to perform specific additional operations on a well and to report the completion of such work.

BLM uses the information for inspection and reservoir management purposes. Technical data provide means to evaluate the appropriateness of specific drilling and completion techniques. The data enable us to monitor the engineering aspects of oil and gas production. We would lack the necessary information to monitor compliance of well activity and operations that were performed on wells if we did not collect this information.

Based on our experience administering the onshore oil and gas program, we estimate the public reporting burden for the information collected on Form 3160–3 is 30 minutes per response. Respondents are operators of oil and gas wells. The frequency of response varies depending on the operations. We estimate the number of responses per year is 4,000 and the total annual burden is 2,000 hours.

We estimate the public reporting burden for the information collected on Form 3160–4 is 1 hour per response. The information collected is already maintained by respondents for their own recordkeeping purposes and must only be entered on the form. Respondents are operators of oil and gas wells. The frequency of response varies depending on the type of activity or operation conducted at oil and gas wells. We estimate the number of responses per year is 2,200 and the total annual burden is 2,200 hours.

We estimate the public reporting burden for the information collection on Form 3160–5 is 25 minutes per response. Respondents are operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases. The frequency of response varies depending on the type of activities or operations conducted. We estimate 34,000 notices filed annually and a total annual burden of 14,167 hours.

The table below summarizes our nonform estimates.

| Information collection (43 CFR) | Requirement | Hours per response | Respondents | Burden hours |
|---|---|---|---|---|
| 3162.3–1(a) | Well-Spacing Program | .5 | 150 | 75 |
| 3162.3–1(e) | Drilling Plans | 8 | 2,875 | 23,000 |
| 3162.6 | Well Markers | .5 | 300 | 150 |
| 3162.5–2(b) | Direction Drilling | 1 | [1] 165 | 165 |
| 3162.4–2(a) | Drilling Tests, Logs, Surveys | 1 | [2] 330 | 330 |
| 3162.3–4(a) | Plus and Abandon for Water Injection | 1.5 | 1,200 | 1,800 |
| 3162.3–4(b) | Plug and Abandon for Water Source | 1.5 | 1,200 | 1,800 |
| 3162.7–1(d) | Additional Gas Flaring | 1 | 400 | 400 |
| 3162.5–1(c) | Report of Spills, Discharges, or Other Undesirable Events. | 2 | 200 | 400 |
| 3162.5–1(b) | Disposal of Produced Water | 2 | 1,500 | 3,000 |
| 3162.5–1(d) | Contingency Plan | 16 | 50 | 800 |
| 3162.4–1(a) and 3162.7y095(d)(1) | Schematic/Facility Diagrams | 4 | 2,350 | 9,400 |
| 3162.7–1(b) | Approval and Reporting of Oil in Pits | .5 | 520 | 260 |
| 3164.1 (Order No. 3) | Prepare Run Tickets | .2 | 90,000 | 18,000 |
| 3162.7–5(b) | Records on Seals | .2 | 90,000 | 18,000 |
| 3165.1(a) | Application for Suspension | 8 | 100 | 800 |
| 3165.3(b) | State Director Review | 16 | 100 | 1,600 |
| 3162.7–5(c) | Site Security | 7 | 2,415 | 16,905 |

| Information collection (43 CFR) | Requirement | Hours per response | Respondents | Burden hours |
|---|---|---|---|---|
| Totals | | | 193,855 | 96,885 |

[1] Or 5% of wells.
[2] Or 10% of wells.

The respondents already maintain the types of information collected for their own recordkeeping purposes and need only submit the required information. This approval includes all information collections under 43 CFR part 3160 that do not require a form.

[FR Doc. 06–5234 Filed 6–8–06; 8:45 am]

**BILLING CODE 4310–84–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–6310–PF–24 1A]**

### Extension of Approved Information Collection, OMB Control Number 1004–0168

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from private landowners. The BLM uses Form OR 2812–6, Report of Road Use, to collect this information. This information allows the BLM to determine road use and maintenance fees for logging road right-of-way permits issued under the O&C Logging Road Right-of-Way regulations (43 CFR subpart 2812).

**DATES:** You must submit your comments to BLM at the address below on or before August 8, 2006. BLM will not necessarily consider any comments received after the above date.

**ADDRESSES:** You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *comments_washington@blm.gov.* Please include ''ATTN: 1004–0168'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** You may contact John Styduhar, BLM Oregon State Office, on (503) 952–6454 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Styduhar.

**SUPPLEMENTARY INFORMATION:** 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions we use;

(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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM may authorize private landowners in western Oregon to transport their timber over BLM-controlled roads under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). The logging road right-of-way permits that BLM issues are subject to the requirements of the O&C Logging Road Right-of-Way regulations (43 CFR subpart 2812). As a condition of each right-of-way permit, a permittee must provide us with a certified statement containing the amount of timber removed, the lands from which the timber was removed, and the BLM roads used to transport the timber. Permittees must submit this information on a quarterly basis using the Form OR–2812–6, Report of Road Use.

The fees we receive for road use contribute to the recovery of costs incurred in the construction of forest access roads. The fees we collect for road maintenance are reimbursements for services we provide to maintain roads. If we did not require the collection of information included in the Repot of Road Use form, it would not be possible to determine payment amounts, ledger account status, or monitor compliance with the terms and conditions of the permit. The cost for services we provide would not be collected in a timely manner if we reduce the frequency of reporting. This has a direct effect on the ability of BLM to properly maintain its road system, protect the road investment, and provide safe and efficient access to the public lands.

Based on our experience administering the activities described above, we estimate the public reporting burden for the information collected is 1 hour per response. The 400 respondents include individuals, partnerships, and corporations engaged to remove and transport timber and other forest products. The frequency of response is quarterly. We estimate 1,600 responses per year and a total annual burden of 1,600 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: June 5, 2006.

**Ted R. Hudson,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. 06–5235 Filed 6–8–06; 8:45 am]

**BILLING CODE 4310–84–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–930–1310–FI; ARES 51032, et al.]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Leases.

**SUMMARY:** Under the provisions of Section 371(a) of the Energy Policy Act of 2005, the Bureau of Land Management (BLM) received a petition for reinstatement of the following oil and gas leases located in Logan County,

Arkansas: ARES 51032, ARES 51036, ARES 51043, ARES 51044, ARES 51054, ARES 51113, ARES 51114, ARES 51115, ARES 51116, ARES 51117, ARES 51119, ARES 51120, ARES 51121, ARES 51124, ARES 51126, ARES 51127, ARES 51128 and ARES 51132. The petition was filed on time and was accompanied by all rentals due since the date the leases terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Gina Goodwin, Lead Land Law Examiner, at 703–440–1534, or Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent respectively. The lessee has paid the required administrative fee for each lease and publication fee to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the BLM is proposing to reinstate the leases listed above, effective August 1, 2002, under the original terms and conditions of the leases and the increased rental and royalty rates cited above. The BLM has not issued any valid leases affecting the lands.

Dated: May 26, 2006.

**Michael D. Nedd,**

*State Director, Eastern States.*

[FR Doc. E6–8963 Filed 6–8–06; 8:45 am]

**BILLING CODE 4310–GJ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–930–1310–FI; WVES 50537]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

**SUMMARY:** Under the provisions of Section 371(a) of the Energy Policy Act of 2005, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas WVES 50537 for lands in Pocahontas County, West Virginia. The petition was filed on time and was accompanied by all rentals due since the date the leases terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Gina Goodwin, Lead Land Law Examiner, at 703–440–1534, or Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent respectively. The lessee has paid the required administrative fee and publication fee to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease WVES 50537, effective February 1, 2004, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued any valid leases affecting the lands.

Dated: May 26, 2006.

**Michael D. Nedd,**

*State Director, Eastern States.*

[FR Doc. E6–8964 Filed 6–8–06; 8:45 am]

**BILLING CODE 4310–GJ–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 27, 2006. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 26, 2006.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**CALIFORNIA**

**Napa County**

Napa Creek Bridge on Main St., (Highway Bridges of California MPS) Main St., SE of Pearl St., Napa, 06000540

**MISSOURI**

**Greene County**

Schneider, Henry, Building, 600 College St.—219–231 S. Main Ave., Springfield, 06000535

Springfield Furniture Company, (Springfield, Missouri MPS AD) 601 N. National, Springfield, 06000536

**Jackson County**

Alana Apartment Hotel, 2700–2706 Troost Ave. and 1015 E. 27th St., Kansas City, 06000543

Bailey Family Farm Historic District, (Lee's Summit, Missouri MPS) Bailey and Ranson Rds, Lee's Summit, 06000537

East 27th Street Colonnades Historic District, (Colonnade Apartment Buildings of Kansas City, MO MPS) 1300–02, 1312–14, 1320–22 E. 27th St., Kansas City, 6000538

Marks and Garvey Historic District, 2429,2433,2437 Tracy Ave., Kansas City, 06000542

Paris and Weaver Apartment Buildings, (Colonnade Apartment Buildings of Kansas City, MO MPS) 3944–46 and 3948–50 Walnut St., Kansas City, 06000545

Studna Garage Building, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) 415 Oak St., Kansas City, 06000539

**Jasper County**

Fifth and Main Historic District, 501–513 S. Main St., 502–508 Virginia St., Joplin, 06000541

**RHODE ISLAND**

**Providence County**

South Street Station, 360 Eddy St., Providence, 06000553

**Washington County**

Upper Rockville Mill, 332 Canonchet Rd., Hopkinton, 06000552

**SOUTH CAROLINA**

**Darlington County**

Darlington Downtown Historic District, (City of Darlington MRA) Along portions of S. Main St. Pearl St., Public Sq. and Exchange St., Darlington, 06000546

**TENNESSEE**

**Montgomery County**

Country Woman's Club, 2216 Old Russellville Pike, Clarksville, 06000549

**Putnam County**

Buffalo Valley School, 2717 Buffalo Valley School Rd., Buffalo Valley, 06000548

**Roane County**

Bethel Cemetery, Euclid Ave. and Third St., Kingston, 06000547

**Shelby County**

Memphis Queen II Floating Vessel, Foot of Monroe at Riverside Dr., Memphis, 06000550

**TEXAS**

**Bexar County**

Harrison, John S., House, 14997 Evans Rd., Selma, 06000551

The Comment Period has been waived for the following resource:

**MISSOURI**

**Jackson County**

District III (Boundary Increase), (Armour Boulevard MRA) 3424 and 3426 Harrison Blvd., Kansas City, 06000544

[FR Doc. E6–8973 Filed 6–8–06; 8:45 am]

**BILLING CODE 4312–51–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–475]**

## Probable Effect of Proposed Definitions for Certain Baby Socks

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and request for public comments.

**DATES:** *Effective Date:* June 5, 2006.

**SUMMARY:** Following receipt of a request from the United States Trade Representative (USTR) on May 26, 2006, the Commission instituted investigation No. 332–475, Probable Effect of Proposed Definitions for Certain Baby Socks, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

**FOR FURTHER INFORMATION CONTACT:** Project Leader, Mrs. Jackie Jones, Office of Industries (202–205–3466; *jackie.jones@usitc.gov*). For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819; *margaret.olaughlin@usitc.gov*).

*Background:* In his letter, the USTR requested that the Commission provide advice as to the probable effect of each of two proposed definitions for babies' booties on U.S. imports from China, on total U.S. imports, and on domestic producers of the affected articles. In an attachment to the request letter, the USTR provided two proposed definitions for babies' booties classifiable in heading 6111 of the Harmonized Tariff Schedule of the United States (HTS), as follows:

**Proposed Definition Number One**

For purposes of heading 6111, babies' booties are knitted or crocheted foot coverings without an applied sole glued, sewn or otherwise affixed to the upper. These articles have bulky embellishments, such as rattles or other attachments, which preclude wearing inside of footwear.

**Proposed Definition Number Two**

For purposes of heading 6111, babies' booties are knitted or crocheted foot coverings without an applied sole glued, sewn or otherwise affixed to the uppers. These articles have embellishments, such as rattles, lace, appliqués, skid-proofing or kick-proofing properties.

As requested, the Commission will submit its advice to the USTR at the earliest possible date, but not later than 3 months following receipt of the letter, or by August 25, 2006. Also as requested, the Commission will issue, as soon as possible thereafter, a public version of the report with any business confidential information deleted.

In the request letter, the USTR referred to the *Memorandum of Understanding Between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products* (''MOU''), which entered into force on January 1, 2006, and established annual quantitative restraints on U.S. imports of certain textile and apparel products originating in China through 2008. In the request letter, the USTR stated that one such quantitative restraint covers category 332/432/632 (hosiery of cotton wool, and manmade fibers), and includes a sublimit on category 332/432/632—part. According to the request letter and the MOU, the quantitative restraint and sublimit on hosiery from China also cover the babies' socks and booties of heading 6111 (category 239).

*Written Submissions:* No public hearing is planned. However, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m., July 11, 2006.

All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or edis@usitc.gov).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov*. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202–205–2000.

Issued: June 6, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–9029 Filed 6–8–06; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–572]**

### In the Matter of Certain Insulin Delivery Devices, Including Cartridges Having Adaptor Tops, and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 8, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Novo Nordisk A/S, Novo Nordisk Inc., and Novo Nordisk Pharmaceuticals Industries, Inc. Supplemental letters were filed on May 11 and 23, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insulin delivery devices, including cartridges having adaptor tops, and components thereof, by reason of infringement of claims 1–3, 5–7, 11, 18, and 19 of U.S. Patent 5,693,027. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on June 5, 2006, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insulin delivery devices, including cartridges having adaptor tops, or components thereof, by reason of infringement of claims 1–3, 5–7, 11, 18, or 19 of U.S. Patent 5,693,027, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Novo Nordisk A/S, Novo Alle, 2880 Bagsvaerd, Denmark.

Novo Nordisk Inc., 100 College Road West, Princeton, NJ 08540.

Novo Nordisk Pharmaceuticals Industries, Inc., 3612 Powhatan Road, Clayton, NC 27527.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sanofi-Aventis Deutschland GmbH, Industriepark Hoechst, D–65926, Frankfurt am Main, Germany.

Sanofi-Aventis, 174/180 Avenue de France, Paris, Cedex 75013 France.

Aventis Pharmaceuticals, Inc., 300 Somerset Corporate Blvd., Bridgewater, NJ 08807.

(c) The Commission investigative attorney, party to this investigation, is Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 6, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–9003 Filed 6–8–06; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–253 and 731–TA–132, 252, 271, 273, 409, 410, 532–534, and 536 (Second Review)]**

### Certain Pipe and Tube From Argentina, Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject reviews.

**DATES:** *Effective Date:* June 2, 2006.

**FOR FURTHER INFORMATION CONTACT:** Russell Duncan (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW.,

Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:** On November 29, 2005, the Commission established a schedule for the conduct of the final phase of the subject full reviews (70 FR 72467, December 5, 2005). The Commission determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). As a result of scheduling conflicts, however, the Commission is revising its schedule in these reviews.

The Commission's new schedule for the reviews is as follows: the Commission will make its final release of information on June 21, 2006, and final party comments are due on June 23, 2006.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and D, E, and F (19 CFR part 207).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 5, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–9004 Filed 6–8–06; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–06–039]**

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** June 13, 2006 at 11 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–860 (Review) (Tin- and Chromium-Coated Steel Sheet from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 26, 2006.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 6, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 06–5281 Filed 6–7–06; 9:57 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Application for Restoration of Firearms Privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 7, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, 650 Massachusetts Avenue, NW., Room 7400, Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Firearms Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3210.1, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for profit. Certain categories of persons are prohibited from possessing firearms. ATF F 3210.1, Application For Restoration of Firearms Privileges is the basis for ATF investigating the merits of an applicant to have his /her rights restored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 125 annual total burden hours associated with this collection.

If additional information is required contact: Robert B Briggs, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry

Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 5, 2006.

**Lynn Bryant,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. E6–8972 Filed 6–8–06; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–58,762]**

### Agilent Technologies, Inc.; Global Financial Services Division; Colorado Springs, CO; Notice of Revised Determination on Reconsideration

By application dated March 21, 2006, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The negative determination applicable to workers of Agilent Technologies, Inc., Global Financial Services Division, Colorado Springs, Colorado was signed on February 16, 2006. The Department's Notice of determination was published in the **Federal Register** on March 10, 2006 (71 FR 12397). The subject workers provide accounting and financial services.

The Department's determination was issued on the findings that the workers do not produce an article and do not directly support production which took place at the subject facility.

In the request for reconsideration, the petitioner asserts that the subject workers support production in three divisions of Agilent Technologies, Inc. (subject firm): Test and Measurement, Life Sciences, and Semi-Conductor Test Solutions. Supplemental information reveals that a significant portion of subject firm operations is related to the Test and Measurement Group.

On September 30, 2005, the subject facility was certified for TAA and ATAA (Agilent Technologies, Inc., Electronic Measurement Group, Colorado Springs, Colorado (TA–W–57,742G).

In previously-submitted material, a subject firm official stated that the subject workers did not support the production of a specific article, but provided administrative support for the entire subject firm, including affiliated facilities producing electronic test equipment. The material also indicated that a significant portion of the subject worker group was separated or threatened with separation during the relevant period.

Because the Department does not discern any significant differences between the workers covered in TA–W–57,742G and the subject worker group, the Department determines that, during the relevant period, the subject workers are engaged in activity supporting production, that the facilities they support shifted production abroad, and that there are likely import increases of articles like or directly competitive with those produced by the subject firm (electronic testing equipment).

In accordance with Section 246 the Trade Act of 1974, as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA for older workers. In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act, as amended, must be met.

The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the information obtained in the reconsideration investigation, I determine that a shift of production abroad followed by increased imports of electronic measurement equipment like or directly competitive with those produced by the firm contributed importantly to separations at the subject facility. In accordance with the provisions of the Act, I make the following certification:

''All workers of Agilent Technologies, Inc., Global Financial Services Division, Colorado Springs, Colorado, who became totally or partially separated from employment on or after January 31, 2005, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 31st day of May 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9011 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–58,540]**

### Cytech Hardwoods, Inc., Amsterdam, NY; Notice of Negative Determination on Reconsideration

On March 17, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's Notice of determination was published in the **Federal Register** on March 29, 2006 (71 FR 15766). Workers produce hardwood lumber and hardwood flooring and are not separately identifiable by product line.

The initial negative determination was issued because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The investigation revealed that the subject firm did not shift production abroad and neither the subject firm nor any of the major declining customers increased their imports of hardwood lumber during the relevant period. The subject firm ceased production in December 2005.

In the request for reconsideration, the company official stated that the subject firm's customers are ''importing finished goods * * *. therefore, they no longer purchase domestic lumber to support finished goods.''

Since the initial investigation did not address the issue of hardwood flooring imports, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. As such, the Department conducted another survey of the customers of their purchases of hardwood lumber and hardwood flooring. The expanded survey revealed no imports of either product during the relevant period.

Based on the company official's allegation in the request for reconsideration, the Department investigated whether the workers of the subject firm are eligible for Trade Adjustment Assistance (TAA) based on the secondary upstream supplier impact. For certification on the basis of the workers' firm being an upstream supplier, the subject firm must have customers that are TAA certified, and these TAA certified customers must

represent a significant portion of subject firm's business. In addition, the subject firm would have to produce a component part of the product that was the basis for the customers' certification.

A search of the TAA database revealed that, for the relevant period, none of the subject firm's major declining customers are TAA certified. As such, the subject worker group is not eligible for TAA under secondary impact.

In order for the Department to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA), the worker group must be certified eligible to apply for TAA. Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance and alternative trade adjustment assistance for workers and former workers of CyTech Hardwood, Inc., Amsterdam, New York.

Signed at Washington, DC, this 31st day of May 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance Assistance.*

[FR Doc. E6–9009 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,111]**

### Eastman Kodak Company; United States and Canada Finance Department; Rochester, NY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Eastman Kodak Company, United States and Canada Finance Department, Rochester, New York. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,111; Eastman Kodak Company United States and Canada Finance Department Rochester, New York (May 31, 2006)

Signed at Washington, DC, this 1st day of June 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9019 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of May 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met, and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–59,174; Ethox International, Inc., Buffalo Mfg. Division, Onsite Leased Workers of ADECCO, Buffalo, NY: April 6, 2005.*

*TA–W–59,196; Kincaid Furniture Co., Inc., Plant #1, On-Site Leased Workers from Foothills Temporary Employment, Hudson, NC: March 16, 2006.*

*TA–W–59,196A; Kincaid Furniture Co., Inc., Corporate Offices, Hudson, NC: April 11, 2005.*

*TA–W–59,238; Nashua Corporation, Imaging Supplies Coverted Paper Division, Jefferson City, TN: April 17, 2005.*

*TA–W–59,311; Paxar Americas, Inc., A Subsidiary of Paxar Corp., Wover Division, On-Site Leased Workers of Manpower, Weston, WV: April 28, 2005.*

*TA–W–59,320; Artee-Wrap Spun Yarns, A Division of Culp, Inc., Lincolnton, NC: May 2, 2005.*

*TA–W–59,348; Ardisam, Inc., Cumberland, WI: May 4, 2005.*

*TA–W–59,356; Masonite Corporation, P.O. Box 285, Corning, CA: May 8, 2005.*

*TA–W–59,368; Formica Corporation, Rocklin, CA: May 9, 2005.*

*TA–W–59,139; Whitesell Corporation, Working On-Site at Electrolux Home Products, Greenville, MI: March 13, 2005.*

*TA–W–59,170; Harris Thomas Industries, Dayton, OH: April 7, 2005.*

*TA–W–59,212; Vanguard Furniture Co., Inc., On-Site Lease Workers of Accuforce, Hickory, NC: April 12, 2005.*

*TA–W–59,254; Layman Lumber Company, LLC, On-Site Leased Workers of Act Now, Inc., Naches, WA: April 19, 2005.*

*TA–W–59,276; Unifi, Inc., Plant #7, Mayodan, NC: April 24, 2005.*

*TA–W–59,200; General Mills, Inc., Pillsbury Division, Allentown, PA: April 12, 2005.*

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–59,096; DJ Orthopedics, Distribution Center, Vista, CA: March 21, 2005.*

*TA–W–59,222; Unilever Supply Chain, Inc., A Division of Conopco, Merced, CA: April 14, 2005.*

*TA–W–59,230; Stolt Sea Farm, A Subsidiary of Stolt-Nielsen, On-Site Leased Workers of Hamilton Connections, Stratford, CT: April 17, 2005.*

*TA–W–59,293; Invensys Appliance Controls, North Manchester, IN: May 29, 2006.*

*TA–W–59,311A; Paxar Americas, Inc., A Subsidiary of Paxar Corp., Printed Division, On-Site Leased Workers of Foothill, Lenior, NC: September 24, 2005.*

*TA–W–59,318; F. Schumacher and Company, dba Vogue Wallcovering, Fitchburg, MA: May 2, 2005.*

*TA–W–59,375; Eagle Picher Automotive, A Subsidiary of Eagle Picher, Hillsdale Tool Division, Hillsdale, MI: November 22, 2005.*

*TA–W–59,375A; Eagle Picher Automotive, A Subsidiary of Eagle Picher, Hillsdale Tool Division, Jonesville, MI: November 22, 2005.*

*TA–W–59,164; Sun Components, Inc., Warsaw, IN: April 3, 2005.*

*TA–W–59,323; Moore Wallace, Business Form Design Division, A RR Donnelly Company, Monroe, WI: April 28, 2005.*

*TA–W–59,386; Woodmaster, Inc., St. Anthony, IN: April 27, 2005.*

The following certification has been issued. The requirement of supplier to a trade certified firm and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

The following certification has been issued. The requirement of downstream producer to a trade certified firm and section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

*TA–W–59,201; Amphenol T and M Antennas, A Division of Amphenol Corp., Vernon Hill, IL.*

*TA–W–59,227; York Group Metal Casket Assembly (The), Matthews Casket Division, A Subsidiary of Matthews International, Marshfield, MO.*

*TA–W–59,344; Factory Screenworks, King, NC.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

*None.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

*TA–W–59,010; Foamex LP, A Subsidiary of Foamex International, Corry, PA.*

*TA–W–59,050; Wise Industries, Kings Mountain, NC.*

*TA–W–59,197; Collins and Aikman Products Co., PO Box 208, Farmville, NC.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

*TA–W–59,042; Smart Papers, Park Falls, WI.*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–59,137; Harte-Hanks, A Subsidiary of Harte Hanks Market Intelligence, Sterling Heights, MI.*

*TA–W–59,268; Freedom Food Service, Intier Automotive Seating of America, A Division of Elliott's, Inc., Red Oak, IA.*

*TA–W–59,270; GC Services, El Paso Operator Services, El Paso, TX.*

*TA–W–59,281; Super Hanger Supply Solutions, Inc., Longwood, FL.*

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

*None.*

**Affirmative Determinations for Alternative Trade Ajdustment Assistance**

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Negative Determinations for Alternative Trade Adjustment Assistance**

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

*TA–W–59,201; Amphenol T and M Antennas, A Division of Amphenol Corp., Vernon Hill, IL.*

*TA–W–59,227; York Group Metal Casket Assembly (The), Matthews Casket Division, A Subsidiary of Matthews International, Marshfield, MO.*

*TA–W–59,344; Factory Screenworks, King, NC.*

*TA–W–59,010; Foamex LP, A Subsidiary of Foamex International, Corry, PA.*

*TA–W–59,050; Wise Industries, Kings Mountain, NC.*

*TA–W–59,042; Smart Papers, Park Falls, WI.*

*TA–W–59,137; Harte-Hanks, A Subsidiary of Harte Hanks Market Intelligence, Sterling Heights, MI.*

*TA–W–59,268; Freedom Food Service, Intier Automotive Seating of America, A Division of Elliott's, Inc., Red Oak, IA.*

*TA–W–59,270; GC Services, El Paso Operator Services, El Paso, TX.*

*TA–W–59,281; Super Hanger Supply Solutions, Inc., Longwood, FL.*

The Department has determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

*None.*

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*TA–W–59,386; Woodmaster, Inc., St. Anthony, IN.*

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

I hereby certify that the fore mentioned determinations were issued during the month of May 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 1, 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9024 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,046]**

### GE Aviation—Engine Services; West Coast Operations, Ontario Plant #1; Ontario, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at GE Aviation—Engine Services, West Coast Operations, Ontario Plant #1, Ontario, California. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,046; GE Aviation—Engine Services West Coast Operations, Ontario Plant #1 Ontario, California (May 31, 2006)

Signed at Washington, DC, this 1st day of June 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9016 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,418]**

### Glomar Steel Company; Synergy Staffing, Incorporated; Ecorse, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 18, 2006, in response to a petition filed by the Highland Park Service Center, MiWorks on behalf of workers at Glomar Steel Company\Synergy Staffing, Incorporated, Ecorse, Michigan.

This investigation revealed that the Highland Park Service Center, MiWorks did not file this petition. The petition was filed by a worker who was employed by Synergy Staffing, Incorporated. The petition has been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 25th day of May 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9023 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,248]**

### Kimberly-Clark; Lakeview Plant; Neenah, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 20, 2006 in response to a petition filed by a company official and the USW Local 2–482 on behalf of workers at Kimberly-Clark, Lakeview Plant, Neenah, Wisconsin.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 24th day of May 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9022 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–58,939]**

### Kmart; Rainbow City, AL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Kmart, Rainbow City, Alabama. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts

or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,939; Kmart, Rainbow City, Alabama (May 31, 2006)

Signed at Washington, DC, this 1st day of June 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9014 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–59,142]**

### Tenneco, Inc.; Clevite-Pullman Division; Mila, OH; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated April 27, 2006, a petitioner requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on April 19, 2006, and was published in the **Federal Register** on May 10, 2006 (71 FR 27292).

The workers of Tenneco, Inc., Clevite-Pullman Division, Milan, Ohio were certified eligible to apply for Trade Adjustment Assistance (TAA) on April 19, 2006.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the petitioner provided new information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation and a contact with the company official has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Tenneco, Inc., Clevite-Pullman Division, Milan, Ohio, who became totally or partially separated from employment on or after March 20, 2005 through April 19, 2008, are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 2nd day of June, 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9021 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–58,926]**

### Triangle Suspension Systems, Inc.; Steel Leaf Springs Dubois, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Triangle Suspension Systems., Inc., Steel Leaf Springs, Dubois, Pennsylvania. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–58,926; Triangle Suspension Systems, Inc. Steel Leaf Springs, Dubois, Pennsylvania (May 25, 2006)

Signed at Washington, DC, this 1st day of June 2006.

**Erica R. Cantor,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E6–9012 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petitions for Modification of Mandatory Safety Standards

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 44.9, 44.10, and 44.11; Petitions for Modification of Mandatory Safety Standards.

**DATES:** Submit comments on or before August 8, 2006.

**ADDRESSES:** Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk or via e-mail to *Rowlett.John@dol.gov*, along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Contact the employee listed in the **ADDRESSESES** section of this notice.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. 30 CFR Part 44 formally delegates the Secretary's authority to receive petitions to the Director of the

Office of Standards, Regulations, and Variances and the authority to issue proposed decisions to the Administrators for Coal and Metal/Nonmetal. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

**II. Desired Focus of Comments**

MSHA is particularly interested in comments that

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

**III. Current Actions**

Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10, detailed guidance for filing a petition for modification is provided for the operator of the affected mine or any representative of the miners at that mine. The petition must be in writing, filed with the Director of the Office of Standards, Regulations, and Variances, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) Proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Petitions for Modification of Mandatory Safety Standards.

*OMB Number:* 1219–0065.

*Recordkeeping:* Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10 The petition must be in writing, filed with the Director of the Office of Standards, Regulations, and Variances, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) Proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

*Frequency:* On Occasion.

*Affected Public:* Business or other for-profit.

*Respondents:* 94.

*Responses:* 94.

*Total Burden Hours:* 2,960.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $40.

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 at Arlington, Virginia, this 2nd day of June, 2006.

**David L. Meyer,**

*Director, Office of Administration and Management.*

[FR Doc. E6–9005 Filed 6–8–06; 8:45 am]

**BILLING CODE 4510–43–P**

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 06–09]**

### Notice of the June 16, 2006 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

**AGENCY:** Millennium Challenge Corporation.

**TIME AND DATE:** 10 a.m. to 12 p.m., Friday, June 16, 2006.

**PLACE:** Department of State, 2201 C Street, NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Information on the meeting may be obtained from Joyce B. Lanham via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

**STATUS:** Meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to discuss the proposed Compact with Ghana; the approval of several proposed Threshold Country Programs; MCC suspension and termination issues; an operations update; and certain administrative matters. The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: June 6, 2006.

**Jon A. Dyck,**

*Vice President and General Counsel.*

[FR Doc. 06–5277 Filed 6–6–06; 4:54 pm]

**BILLING CODE 9210–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities; Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB Review; Comment Request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 4382, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Catherine Hines, Acting Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *chines@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–4414.

**FOR FURTHER INFORMATION CONTACT:** Katharine Hines at (703) 292–4414 or send e-mail to *chines@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.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:** *Title of Collection:* Evaluation of the National Science Foundation's (NSF) Faculty Early Career Development (CAREER) Program.

*OMB Control No.:* 3145–NEW.

*Abstract:* The National Science Foundation (NSF) requests a three-year clearance for research, evaluation and data collection (*e.g.,* surveys and interview) from actual and potential applicants to and other stakeholders in the Faculty Early Career Development Program (CAREER). CAREER stakeholders typically are limited to PhD scientists and engineers and faculty and administrators from universities and not-for-profit institutions (*e.g.,* museums, non-degree granting educational or research institutions), and former NSF employees and intergovernmental personnel act (IPA) appointees. A preliminary, predecessor study to this new evaluative research was approved through September 2001 as an external (third-party) program evaluation under the EHR Generic Clearance (OMB 345–0136). The earlier CAREER study was conducted by Abt Associates, Inc., Cambridge, MA, and it examined only the first three years that NSF provided CAREER grants to eligible institutions in Fiscal Years (FY) 1995 through 1997. A coy of Abt's final report to NSF entitled Faculty Early Career Development (*CAREER*) *Program: External Evaluation Summary Report*) (NSF 01–134) was posted in August 2001 on NSF's Web site and remains available at: *http://www.nsf.gov/pubs/2001/nsf01134/nsf01134.pdf.* The new CAREER program evaluation is estimated to cover from FY 1995 through FY 2005.

NSF established the CAREER Program to support career-development for beginning teacher-scholars in Science, Technology, Engineering and Mathematics (STEM), within the context of the mission of their employing organization. CAREER typically awards a grant to support the research and educational activities conducted by individual scientists and engineers with PhDs (or the equivalent). For specific details and the most updated information regarding CAREER program operations, please visit the NSF Web site at: *http://www.nsf.gov/funding/pgm_summ.jsp?pims_id=5262&from=fund.*

NSF has contracted a new program evaluation of CAREER, to be conducted by Abt Associates Inc. Through this new evaluation of the CAREER Program NSF aims to identify, measure and document:

(i) The longer-term impacts of this program on the research activities, educational activities and career advancement of CAREER awardees;

(2) The program's impacts on the integration of research and education by individual STEM faculty;

(3) The impacts of the CAREER program on the institutions (including at the department or other sub-institutional level) that administer the NSF funding to a CAREER scientist or engineer; and

(4) Changes within NSF that may be attributed to the CAREER program's operations, benefiting scientists and engineers, and other CAREER stakeholders.

The primary methods of data collection will include meta-data collection from open sources and from records at NSF and grantee institutions; surveys, institutional site visits, and in-person and telephone interviews. There is a bounded (or limited) number of respondents within the general public who will be affected by this research, including current and former CAREER awardees, scientists and engineers currently or once eligible to apply to CAREER, other scientists and engineers and the STEM research and education communities. NSF will use the CAREER program evaluation data and analyses to respond to requests from Committees of Visitors (COV), Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Effectiveness Rating Tool (PART). NSF will also use the program evaluation to improve communication with CAREER stakeholders and to share the broader impacts of the CAREER program with the general public.

*Respondents:* Individuals or households, business or other for profit, Federal Government, State, local or Tribal Government and not-for-profit institutions.

*Estimated Number of Respondents:* 4000.

*Burden on the Public:* 2000 hours.

Dated: June 5, 2006.

**Catherine J. Hines,**

*Acting Reports Clearance Officer, National Science Foundation.*

[FR Doc. 06–5239 Filed 6–8–06; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–03026]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 37–02766–01, for Unrestricted Release of a Fox Chase Cancer Center Facility In Philadelphia, PA

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** Willie J. Lee, Health Physicist, Medical Branch, Division of Nuclear Materials Safety, Region I, U.S Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, Pennsylvania, 19406; telephone (610) 337–5090; fax (610) 337–5269; or by e-mail: *wj11@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 37–02766–01. This license is held by Fox Chase Cancer Center (the Licensee), for several facilities, including its MRI Building (the Facility), located at 333 Cottman Avenue in Philadelphia, Pennsylvania. Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated November 8, 2005. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

### II. Environmental Assessment

*Identification of Proposed Action*

The proposed action would approve the Licensee's November 8, 2005, license amendment request, resulting in release of the Facility for unrestricted use. License No. 37–02766–01 was issued to American Oncologic Hospital in 1957, transferred to Fox Chase Cancer Center in 1985, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use Hydrogen-3, Carbon-14, Phosphorus-32, and Phosphorus-33 for purposes of research and development activities on laboratory bench tops and in hoods.

The Facility is situated on 17,900 square feet, and consists of general office and laboratory space. The Facility is located in a mixed residential/commercial area. Within the Facility, use of licensed materials was confined to Rooms M019, M144, M153, and M157, with an approximate area of 1600 square feet total.

In September of 2005, the Licensee ceased licensed activities at the Facility and initiated a survey of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that decontamination activities were not required. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that the affected areas were free of contamination and the Facility meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

*Need for the Proposed Action*

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted demolition of its Facility.

*Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen–3 and Carbon–14.

The Licensee conducted a final status survey on October 21 and November 4, 2005. This survey covered Labs M019, M144, M151, M153, M155, M156, M157, and adjacent hallways. The Facility contained seven labs; however, only four (M019, M144, M153, and M157) involved the use of byproduct material. The final status survey report was attached to the Licensee's supplemental information submitted in support of the amendment request dated January 31 and February 2, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results indicated that the affected areas were free of contamination and thus were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC concludes that the Licensee 's final status survey results are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402.

*Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, this denial of the application would result in no change

in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

*Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

*Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the Pennsylvania Department of Environmental Protection for review on March 30, 2006. On May 5, 2006, the Pennsylvania Department of Environmental Protection responded by email. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

**III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

**IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NRC License No. 37–02766–01 inspection and licensing records.

2. Letter dated November 8, 2005, requesting that the MRI Building at the Fox Chase Cancer Center, Philadelphia, Pennsylvania, be released for unrestricted use [ADAMS Accession No. ML053220642].

3. Letter dated January 31, 2006, providing additional information for MRI Building Decommissioning at Fox Chase Cancer Center, Philadelphia, Pennsylvania [ADAMS Accession No. ML060340527].

4. Letter dated February 2, 2006, providing additional information for MRI Building Decommissioning at Fox Chase Cancer Center, Philadelphia, Pennsylvania [ADAMS Accession No. ML060400106].

5. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance.''

6. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination.''

7. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

8. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 1st day of June 2006.

For the Nuclear Regulatory Commission.

**Pamela J. Henderson,**

*Chief, Medical Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E6–8976 Filed 6–8–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Final Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 8.38, entitled ''Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,'' describes an acceptable program for implementing the requirements of Title 10, Part 20, of the *Code of Federal Regulations* (10 CFR Part 20), ''Standards for Protection Against Radiation.'' In particular, 10 CFR 20.1101, ''Radiation Protection Programs,'' requires licensees to develop and implement a radiation protection program appropriate to the scope of licensed activities and potential hazards. To augment that requirement, 10 CFR 20.2102, ''Records of Radiation Protection Programs,'' requires licensees to document those radiation protection programs. An important aspect of such programs at nuclear power plants is the institution of a system of controls that includes procedures, training, audits, and physical barriers to protect workers against unplanned exposures in high and very high radiation areas. Toward that end, 10 CFR 20.1601 provides specific requirements applicable to controlling access to high radiation areas, while 10 CFR 20.1602 provides additional requirements to prevent unauthorized or inadvertent entry into very high radiation areas. Appendix A to the revised guide augments this guidance with recommended procedures for good operating practices for underwater diving operations in high and very high radiation areas. In addition, Appendix B summarizes past experience with very high and potentially very high radiation areas, so that pertinent historical information is readily accessible.

Dose rates in areas of nuclear power plants that are accessible to individuals can vary over several orders of magnitude. High radiation areas, where personnel can receive doses in excess of the regulatory limits in a relatively short time, require special controls. Very high radiation areas require much stricter monitoring and controls, because failure to adequately implement effective radiological controls can result in radiation doses that result in a significant health risk. Thus, it is important that licensees have effective programs for controlling access to high

and very high radiation areas because of the potential for overexposure.

The primary purpose of this revision is to clarify the terminology related to the physical barriers that licensees could use to prevent unauthorized personnel access to high and very high radiation areas. The original version of Regulatory Guide 8.38 used the term ''inadvertent entry'' with two different connotations. As used in Section 1.5, ''Physical Controls,'' the term was intended to connote ''not a willful violation.'' In several other sections, however, ''inadvertent entry'' was used to mean ''an accidental, or unintended, entry.'' This disparity led to inconsistent readings of the staff's regulatory position by licensees and other stakeholders. Consequently, in preparing this revision, the NRC staff rewrote Section 1.5 to eliminate the use of the term ''inadvertent entry,'' and provide additional guidance on the acceptability of physical barriers used to control access to high radiation areas.

The staff also revised Section 1.6, ''Shielding,'' and Section 4.2, ''Materials,'' to explicitly state the staff's regulatory positions, which were only implied in the original version. In addition, the staff updated Appendix B to include recent references that discuss industry experiences with high and very high radiation areas.

Revision 1 to Regulatory Guide 8.38 does not change previous staff positions. Therefore, this revision does not constitute a backfit, as defined in 10 CFR 50.109.

The NRC previously solicited public comment on this revised guide by publishing a **Federal Register** notice (70 FR 58490) concerning Draft Regulatory Guide DG–8028 on October 6, 2005. Following the closure of the public comment period on December 5, 2005, the staff considered all stakeholder comments in the course of preparing Revision 1 of Regulatory Guide 8.38. The staff's responses to all comments received are available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061350247.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Revision 1 of Regulatory Guide 8.38 may be directed to Harriet Karagiannis at (301) 415–6377 or by e-mail to *HXK@nrc.gov*.

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies of Revision 1 of Regulatory Guide 8.38 are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061350096.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of May, 2006.

For the U.S. Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. E6–8975 Filed 6–8–06; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS343]**

## WTO Dispute Settlement Proceeding Regarding United States—Antidumping Measures on Shrimp From Thailand

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice that on April 24, 2006, Thailand requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning certain issues relating to the imposition of antidumping measures on shrimp from Thailand. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS343/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 30, 2006 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to *FR0619@ustr.eop.gov*, Attn: ''Thailand Shrimp Zeroing/Bond Dispute (DS343)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

**FOR FURTHER INFORMATION CONTACT:** Elissa Alben, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9622.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. In an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva,

Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

**Major Issues Raised by Thailand**

On August 4, 2004, the Department of Commerce published in the **Federal Register** notice of its affirmative preliminary less-than-fair-value (''LTFV'') determination in an investigation concerning certain frozen and canned warm water shrimp from Thailand (69 FR 47,100). On December 23, 2004, the Department of Commerce published notice of its affirmative final LTFV determination (69 FR 76,918), and on February 1, 2005, the Department of Commerce published an amended final LTFV determination, along with an antidumping duty order, covering only certain frozen warm water shrimp from Thailand (70 FR 5145). The latter notice contains the final margins of LTFV sales, as provided in section 733 of the Tariff Act of 1930, as amended.

In its request for consultations, Thailand alleges that the United States ''through its use of 'zeroing' * * * failed to make a fair comparison between the export price and the normal value, and calculated distorted margins of dumping,'' and therefore violated Articles 1, 2.1, 2.4, 2.4.2, 3.1, 3.2, 3.3, 3.4, 3.5, 5.8, 9.2 and 9.3 of the AD Agreement. In addition, Thailand alleges that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of frozen warmwater shrimp imported by the importer in the preceding year, and that the continuous bond requirement and its application to goods subject to the order ''constitute specific action against dumping not in accordance with'' Article VI:2 of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994'') and its Ad Article, as well as Articles 2, 7.1, 7.2, 7.5, 9.2, and 9.3 of the AD Agreement. Thailand also states that the continuous bond requirement as such and its application to imports of frozen warmwater shrimp from Thailand may be inconsistent with Articles I:1, II, III, XI:1 and XIII:1, and may not be justified under Article XX(d), of the GATT 1994.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) electronically, to *FR0619@ustr.eop.gov,* Attn: ''Thailand Shrimp Zeroing/Bond Dispute (DS343)'' in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''Business Confidential'' at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''Submitted in Confidence'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–343, Thailand Shrimp Zeroing/Bond Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E6–9034 Filed 6–8–06; 8:45 am]

**BILLING CODE 3190–W6–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53592; File No. SR–NYSEArca–2006–21]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Approval of Market Data Fees for NYSE Arca Data

June 7, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2006, the NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to establish market data fees for the receipt and use of market data that the Exchange makes available. The text of the proposed rule change is available below. Proposed new language is *italicized.*

* * * * *

*Schedule of NYSE Arca Market Data Fees*

*1. Monthly Access Fees.*

*A. Direct Access: $750 per set of four Logons*

*B. Indirect Access: $750*

*2. Monthly Device Fees*

*A. Professional Subscribers*

*i. For ArcaBook information relating to Exchange-Traded Funds and CTA Plan Securities: $15.00*

*ii. For ArcaBook information relating to UTP Plan Securities (other than Exchange-Traded Funds): $15.00*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*iii. For limit order information and last sale price information relating to bonds that are traded through NYSE Arca facilities: No charge.*

*B. Nonprofessional Subscribers*

i. For ArcaBook information relating to Exchange-Traded Funds and CTA Plan Securities: $5.00

*ii. For ArcaBook information relating to UTP Plan Securities (other than Exchange-Traded Funds): $5.00*

*iii. For limit order information and last sale price information relating to bonds that are traded through NYSE Arca facilities: No charge.*

*C. Maximum Monthly Device Fee Payments. An entity that is registered as a broker-dealer under the Securities Exchange Act of 1934 is not required to pay more than the monthly broker-dealer ''Maximum Amount'' for device fees payable in respect of services that it provides to:*

*(i) Nonprofessional Subscribers that maintain brokerage accounts with the broker-dealer; and*

*(ii) Professional Subscribers that are not affiliated with the broker-dealer or any affiliate of the broker-dealer (either as an officer, partner or employee or otherwise) and that maintain brokerage accounts directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker dealer);*

*provided, however, that Nonprofessional Subscribers must comprise no less than 90 percent of the pool of subscribers as to which the monthly Maximum Amount applies. The ''Maximum Amount'' for any month in calendar year 2006 shall equal $20,000. The ''Maximum Amount'' for the months falling in a subsequent calendar year shall increase by the percentage increase (if any) in the annual composite share volume for the calendar year preceding that subsequent calendar year, subject to a maximum annual increase of five percent.*

*For example, if the annual composite share volume for calendar year 2006 increases by three percent over the annual composite share volume for calendar year 2005, then the monthly Maximum Amount for months falling in calendar year 2007 would increase by three percent to $20,600.*

*D. Free Trial Period—No device fees apply in respect of the receipt of NYSE Arca Market Data by a Professional Subscriber or Nonprofessional Subscriber in the calendar month in which the subscriber first becomes authorized to receive the data. For example, if a subscriber becomes authorized to receive NYSE Arca Market Data on May 10, the device fees will not apply during that month of May.*

*For the purposes of this Market Data Fee Schedule, the following definitions shall apply:*

*1. ''CTA Plan'' means the plan pursuant to which national securities exchanges disseminate last sale prices of transactions in CTA Plan Securities in compliance with Rule 601 under Regulation NMS. The CTA Plan can be found at http://www.nysedata.com/nysedata/Default.aspx?tabid=227.*

*2. ''CTA Plan Security'' means a security (a) that is listed for trading on one or more national securities exchanges, other than those listed on the Nasdaq Stock Market, Inc., and (b) trades in which are reported pursuant to the CTA Plan*

*3. ''Direct Access'' means access to NYSE Arca market data by means of a direct connection or linkage to NYSE Arca facilities. ''Indirect Access'' means access to NYSE Arca Data through an intermediary.*

*4. ''Exchange-Traded Fund'' means exchange-listed securities representing interests in open end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities.*

*5. ''Logon'' means a single means of access to one instance of an NYSE Arca datafeed. For example, if an access recipient gains access to NYSE Arca Data during a month by means of one logon to receive ArcaBook, a second logon to receive NYSE Arca bond information, a third logon to receive NYSE Arca back-up access to ArcaBook and a fourth logon to receive back-up access to NYSE Arca bond information, that recipient would have enjoyed four Logons during the month.*

*6. ''Nonprofessional Subscriber'' means an authorized end-user of NYSE Arca Data who is a natural person and who is neither:*

*(a) Registered or qualified with the Securities and Exchange Commission (the ''Commission''), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;*

*(b) Engaged as an ''investment advisor'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor*

*(c) Employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.*

*7. ''Professional Subscriber'' means an authorized end-user of NYSE Arca Data that has not qualified as a Nonprofessional Subscriber.*

*8. ''UTP Plan'' means the ''Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis'' pursuant to which national securities exchanges disseminate last sale prices of transactions in UTP Plan Securities in compliance with Rule 601 under Regulation NMS. The UTP Plan can be found at http://www.utpdata.com.*

*9. ''UTP Plan Security'' means a security that is listed for trading on the Nasdaq Stock Market, Inc. and (a) as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Exchange Act or which become eligible for such trading by order of the Commission or (b) which is also listed on another national securities exchange.*

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *The Services.* Through NYSE Arca, L.L.C. (''NYSE Arca''), the equities trading facility of NYSE Arca Equities, the Exchange makes ArcaBook℠, a compilation of all limit orders resident in the NYSE Arca limit order book, available on a real-time basis.[3] In addition, the Exchange makes available real-time information relating to transactions and limit orders in debt

[3] The Exchange notes that it makes available to vendors the best bids and offers that are included in ArcaBook data no earlier than it makes those best bids and offers available to the processors under the Consolidated Quotation System Plan (''CQ Plan'') and the ''Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis'' (''UTP Plan'').

securities that are traded through the Exchange's facilities.

The Exchange makes ArcaBook and the bond trade and limit order information (collectively, ''NYSE Arca Data'') available to market data vendors, broker-dealers, private network providers and other entities by means of data feeds. By making NYSE Arca Data available, ArcaBook enhances market transparency and fosters competition among orders and markets.

b. *Fees.* The Exchange proposes to establish the Market Data Fee Schedule to the proposed rule change for the receipt and use of NYSE Arca Data. As the Market Data Fee Schedule details, the Exchange is proposing to assess access fees and professional and nonprofessional device fees, categories of fees that are consistent with the fees that the New York Stock Exchange (''NYSE'') and the Nasdaq Stock Market (''Nasdaq''), and the Participants in the Consolidated Tape Association (''CTA''), CQ, UTP and Options Pricing Reporting Authority (''OPRA'') Plans, charge for the receipt and use of their market data.

i. *Access Fees.* The Exchange proposes to impose a monthly $750 fee for a data recipient to gain direct access to the datafeeds through which the Exchange makes NYSE Arca Data available. This fee would entitle the datafeed recipient to gain access to NYSE Arca Data for a set of up to four ''Logons.'' A ''Logon'' is activation of a means of direct access to any of the NYSE Arca datafeeds. For instance, if a datafeed recipient gains access to NYSE Arca Data one or more times during a month using an Exchange-provided and approved logon that provides access to the ArcaBook datafeed, that would constitute a ''Logon.'' If, during that month, the datafeed recipient uses a different logon name that allows for access to a server that provides access to the ArcaBook datafeed, that would constitute a second ''Logon.''

The Exchange proposes to impose a monthly $750 fee for a data recipient to gain indirect access to the datafeeds through which the Exchange makes NYSE Arca Data available for any number of Logons. ''Indirect access'' refers to access to a NYSE Arca Datafeed indirectly through one or more intermediaries, rather than by means of a direct connection or linkage with the Exchange's facilities.

ii. *Device Fees.* The Exchange proposes to establish device fees for professional and nonprofessional subscribers for the display of ArcaBook. In differentiating between professional and nonprofessional subscribers, the Exchange proposes to apply the same criteria for qualification as a nonprofessional subscriber as the CTA and CQ Plan Participants use.

a. *For Professional Subscribers.* For professional subscribers, the Exchange is proposing to establish (i) a monthly fee of $15 per device for the receipt of ArcaBook data relating to Exchange-Traded Funds and those equity securities for which reporting is governed by the CTA Plan (''CTA Plan and ETF Securities'') and (ii) a monthly fee of $15 per device for the receipt of ArcaBook data relating to those equity securities for which reporting is governed by the UTP Plan (excluding Exchange-Traded Funds; ''UTP Plan Securities'').

The combined monthly professional subscriber device fee of $30 (*i.e.*, for receipt of Arca data relating to CTA Plan and ETF Securities and to UTP Plan Securities) compares favorably with comparable fees charged by other exchanges for similar services. For instance, for professional subscribers, Nasdaq charges $76 for its combined TotalView [4] and OpenView [5] products and NYSE charges $60 for NYSE OpenBook.[6]

b. *For Nonprofessional subscribers.* For nonprofessional subscribers, the Exchange is proposing to reduce those monthly fees to $5 per device for the receipt of ArcaBook data relating to CTA Plan and ETF Securities and $5 per device for the receipt of ArcaBook data relating to UTP Plan Securities (*i.e.*, a combined fee of $10 for both CTA Plan and ETF Securities and UTP Plan Securities).

The Exchange proposes to limit for any one month the maximum amount of device fees payable by any broker-dealers in respect of nonprofessional subscribers that maintain brokerage accounts with the broker-dealer. Professional subscribers may be included in the calculation of the monthly maximum amount, so long as:

(1) Nonprofessional subscribers comprise no less than 90 percent of the pool of subscribers that are included in the calculation;

(2) Each professional subscriber that is included in the calculation is not affiliated with the broker-dealer or any of its affiliates (either as an officer, partner or employee or otherwise); and

(3) Each such professional subscriber maintains a brokerage account directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker dealer).

For 2006, the maximum amount for any calendar month shall equal $20,000. For the months falling in a subsequent calendar year, the maximum monthly payment shall increase (but not decrease) by the percentage increase (if any) in the annual composite share volume [7] for the calendar year preceding that subsequent calendar year, subject to a maximum annual increase of five percent.[8] For example, if the annual composite share volume for calendar year 2006 increases by three percent over the annual composite share volume for calendar year 2005, then the monthly ''Maximum Amount'' for months falling in calendar year 2007 would increase by three percent to $20,600.

The Maximum Amount compares favorably with monthly maximums payable to Nasdaq and to the CTA Plan Participants. Nasdaq set the maximum at $25,000 per month for nonprofessional subscribers' receipt of TotalView, though it does not apply to OpenView or to Level 1 or NQDS services. The CTA Plan Participants currently set the maximum at $630,000 per month for internal distribution within a broker-dealer's organization and for the broker-dealer's distribution to nonprofessional subscribers that maintain brokerage accounts (the ''CTA Monthly Maximum'').

The Exchange notes that these device fees are lower than the fees that NYSE and Nasdaq charge for their limit order data services.

The Exchange does not presently propose to impose device fees for the display of limit order, quotation and last sale price information relating to bonds that are traded through the Exchange's facilities. The Exchange will not establish device fees for that information without first filing with the Commission a proposed rule change on Form 19b–4 and receiving Commission approval.

iii. *Free Trial Period.* As an incentive to prospective subscribers, the Exchange proposes to offer subscribers the right to receive NYSE Arca Data free of charge

[4] Through TotalView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in UTP Plan Securities. TotalView displays quotes and orders at multiple prices and is similar to ArcaBook.

[5] Through OpenView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in CTA Plan Securities. OpenView displays quotes and orders at multiple prices and is similar to ArcaBook.

[6] Through NYSE OpenBook, NYSE provides information relating to limit orders.

[7] ''Composite share volume'' for a calendar year refers to the aggregate number of shares in all securities that trade over NYSE Arca facilities for that calendar year.

[8] This is the same annual increase calculation that the Commission approved for the CTA Monthly Maximum. *See* Securities Act Release No. 34–41977 (October 5, 1999) (File No. SR–CTA/CQ–99–01).

for the duration of the billable month in which the subscriber first gains access to the data. For example, if a subscriber (whether professional or nonprofessional) is billed on a calendar-month basis and first gains access to NYSE Arca Data on May 10, the device fees set forth in the proposed rule change will not apply during that month of May.

iv. *Justification of fees.* NYSE Arca believes that the proposed market data fees would reflect an equitable allocation of its overall costs to users of its facilities. The Exchange believes that the fees are fair and reasonable because they compare favorably to fees that other markets charge for similar products.

For instance, the combined monthly professional subscriber device fee of $30 (*i.e.*, for receipt of NYSE Arca data relating to CTA Plan and ETF Securities and to UTP Plan Securities) compares favorably with the $76 that Nasdaq charges professional subscribers for its combined TotalView and OpenView products and the $60 that NYSE charges professional subscribers for NYSE OpenBook.

For nonprofessional subscribers, Nasdaq charges $14 per month for its TotalView product and does not offer a nonprofessional subscriber rate for OpenView. Similarly, NYSE does not offer a nonprofessional subscriber rate for its OpenBook product. NYSE Arca proposes to charge nonprofessional subscribers $10 per month for NYSE Arca data relating to CTA Plan and ETF Securities and to UTP Plan Securities.

For direct access, NYSE Arca proposes to charge $750 per month for a set of up to four logons and, for indirect access, NYSE Arca proposes to charge $750 per month for any number of logons. In contrast, NYSE charges $5000 per month for direct or indirect access to OpenBook and Nasdaq charges $2500 per month for access to TotalView and another $2500 per month for access to the OpenView datafeed.

c. *Contracts.* The Exchange will require each recipient of a datafeed containing NYSE Arca Data to enter into the form of ''vendor'' agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter. That agreement will authorize the datafeed recipient to provide NYSE Arca Data services to its customers or to distribute the data internally.

In addition, the Exchange will require each professional end-user that receives NYSE Arca Data displays from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network A data to enter and to require vendors and broker-dealers to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network A nonprofessional subscribers.

The Network A Participants drafted the vendor and Network A professional subscriber agreements as one-size-fits-all forms to capture most categories of market data dissemination. They are sufficiently generic to accommodate NYSE Arca Data. The Commission has approved the vendor form and the professional subscriber form.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among Exchange participants, issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2006–21 and should be submitted on or before June 30, 2006.

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[9] *See* Securities Exchange Act Release Nos. 34–22851 (January 31, 1986), 51 FR 5135 (February 11, 1986); 34–28407 (September 6, 1990), 55 FR 37276 (September 10, 1990); and 34–49185 (February 4, 2004), 69 FR 6704 (February 11, 2004).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 06–5300 Filed 6–7–06; 1:12 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–53591; File No. SR–NYSEArca–2006–23]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Pilot Program for NYSE Arca BBO Data

June 7, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2006, the NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca''), proposes to establish as a six-month pilot program market data fees for the receipt and use of market data relating to the Exchange's best bids and offers. The text of the proposed rule change is available on the Exchange's Web site (*http://www.archipelago.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

(a) *The Service.* Through NYSE Arca, L.L.C., the equities trading facility of NYSE Arca, the Exchange makes ArcaBook℠, a compilation of all limit orders resident in the NYSE Arca limit order book, available on a real-time basis. The Exchange proposes to permit vendors to cull best bids and offers from its ArcaBook℠ product to create an NYSE Arca Best-Bid-and-Offer service for distribution to its professional and nonprofessional subscribers (a ''BBO Service'').[3]

(b) *Proposed Fees.* Contemporaneously with the proposed rule change, the Exchange has submitted another proposed rule change that proposes to establish market data fees and a Market Data Fee Schedule for the receipt and use of certain of the Exchange's market data services, including ArcaBook (''ArcaBook Fee Filing'').[4] The ArcaBook fees include access fees and professional and nonprofessional device fees.

With the proposed rule change, the Exchange proposes as a six-month pilot program to supplement those fees and that fee schedule with the addition of device fees for the Exchange's BBO Service. The Exchange is proposing to set the device fee for professional subscribers who receive BBO Services for both ''CTA Plan[5] and ETF Securities'' and ''UTP Plan Securities'' (but no other bids and offers that are included in ArcaBook) at $15, rather than the combined fee of $30 that would otherwise apply to the receipt of ArcaBook data for both CTA Plan and ETF Securities and UTP Plan Securities.

The combined monthly professional subscriber device fee of $15 compares favorably with comparable device fees in the industry for similar products. For instance, the 14-tier rate schedule under the CTA Plan imposes device fees ranging from $127.25 for a professional subscriber using one device to $18.75 for a professional subscriber using more than 10,000 devices. Under the UTP Plan, the comparable fee is $20.

Similarly, the Exchange is proposing to set the device fee for nonprofessional subscribers who receive both BBO Services (but no other bids and offers that are included in ArcaBook) at $5, rather than the combined fee of $10 that would otherwise apply. In differentiating between professional and nonprofessional subscribers, the Exchange proposes to apply the same criteria for qualification as a nonprofessional subscriber as the CTA and CQ Plan Participants use, as described in the proposed ArcaBook Fee Filing. The $5 nonprofessional subscriber fee is higher than the nonprofessional subscriber fees that are payable under the CQ and UTP Plans in recognition of the fact that NYSE Arca provides the data to vendors simultaneously with its delivery of the data to the processors under the CQ and UTP Plans. This allows vendors to receive the best bids and offers, and to distribute that data to their subscribers, more quickly than under the CQ and UTP Plans because it eliminates the processing time of the Plans' processors.

The ArcaBook Fee Filing establishes a monthly maximum amount of device fees payable by any broker-dealer in respect of certain subscribers that maintain brokerage accounts with the broker-dealer. The Exchange proposes to subject BBO Service fees payable by any broker-dealer in respect of those same subscribers to that monthly maximum.

NYSE Arca believes that the proposed BBO Service fees would reflect an equitable allocation of its overall costs to users of its facilities.

(c) *Free Trial Period.* As an incentive to prospective subscribers, the Exchange proposes to offer subscribers the right to receive BBO Services free of charge for the duration of the calendar month in which the subscriber first becomes authorized to receive the data. For example, if a subscriber (whether professional or nonprofessional) becomes authorized to receive the NYSE Arca BBO Services on May 10, the device fees set forth in the proposed rule change will not apply during that month of May.

2. Statutory Basis

The basis under the Act for the proposed rule change are the

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it makes available to vendors the best bids and offers that are included in ArcaBook data no earlier than it makes those best bids and offers available to the processors under the Consolidated Quotation System Plan (''CQ Plan'') and the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis (''UTP Plan'').

The Commission made minor clarifications to the description of the service contained in this paragraph pursuant to telephone conversations between Janet Angstadt, Acting General Counsel, NYSE Arca, Inc. and Kelly Riley, Assistant Director, Commission, on June 6, 2006.

[4] *See* Securities Act Release No. 34–53592, June 7, 2006.

[5] Consolidated Tape Association Plan (''CTA Plan'').

requirement under Section 6(b)(4)[6] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[7] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–23 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2006–23 and should be submitted on or before June 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 06–5301 Filed 6–7–06; 1:12 pm]

**BILLING CODE 8010–01–P**

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10180 and #10181]**

### Alabama Disaster Number AL–00003

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 6.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1605–DR) , dated August 29, 2005.

*Incident:* Hurricane Katrina.

*Incident Period:* August 29, 2005 through September 26, 2005.

*Effective Date:* May 31, 2006.

*EIDL Loan Application Deadline Date:* June 28, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Alabama, dated August 29, 2005, is hereby amended to extend the deadline for filing applications for economic injury as a result of this disaster to June 28, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E6–8967 Filed 6–8–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10205 and #10206]**

### Louisiana Disaster Number LA–00004

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 12.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1607–DR) , dated September 24, 2005.

*Incident:* Hurricane Rita.

*Incident Period:* September 23, 2005 through November 1, 2005.

*Effective Date:* May 31, 2006.

*EIDL Loan Application Deadline Date:* July 26, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Louisiana, dated September 24, 2005, is hereby amended to extend the deadline for filing applications for economic injury as a result of this disaster to July 26, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E6–8966 Filed 6–8–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10176 and #10177]**

### Louisiana Disaster Number LA–00002

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 6.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1603–DR), dated August 29, 2005.

*Incident:* Hurricane Katrina.

*Incident Period:* August 29, 2005 through November 1, 2005.

*Effective Date:* May 31, 2006.

*EIDL Loan Application Deadline Date:* June 28, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Louisiana, dated August 29, 2005, is hereby amended to extend the deadline for filing applications for economic injury as a result of this disaster to June 28, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E6–8969 Filed 6–8–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10178 and #10179]**

### Mississippi Disaster Number MS–00005

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 7.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1604–DR), dated August 29, 2005.

*Incident:* Hurricane Katrina.

*Incident Period:* August 29, 2005 through October 14, 2005.

*Effective Date:* May 31, 2006.

*EIDL Loan Application Deadline Date:* June 28, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Mississippi, dated August 29, 2005, is hereby amended to extend the deadline for filing applications for economic injury as a result of this disaster to June 28, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E6–8968 Filed 6–8–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10203 and #10204]**

### Texas Disaster Number TX–00066

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 6.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Texas ( FEMA–1606–DR ) , dated September 24, 2005.

*Incident:* Hurricane Rita.

*Incident Period:* September 23, 2005 through October 14, 2005.

*Effective Date:* May 31, 2006.

*EIDL Loan Application Deadline Date:* July 26, 2006.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Texas, dated September 24, 2005, is hereby amended to extend the deadline for filing applications for economic injury as a result of this disaster to July 26, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E6–8965 Filed 6–8–06; 8:45 am]

**BILLING CODE 8025–01–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 May 19, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2006–24834.

*Date Filed:* May 16, 2006.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 6, 2006.

*Description:* Application of NEOS S.p.A. requesting a foreign air carrier permit authorizing (i) the carriage of international charter traffic of passengers and their accompanying baggage, and/or cargo between any point

or points in the Republic of Italy and any point or points in the territory of the United States; and between any point or points in the United States and any point or points in any third country or countries subject to the conditions set out in the currently effective ''Open Skies'' agreement between the Republic of Italy and the United States of America; and (ii) such other charter trips in foreign air transportation as the Department may authorize pursuant to the terms, conditions and limitations of Part 212.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. E6–8983 Filed 6–8–06; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket Number: FTA–2006–24947]**

### Notice of Availability of Proposed Interim Guidance and Instructions for Small Starts and Request for Comments

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability; Request for comments.

**SUMMARY:** This notice announces the availability of the Federal Transit Administration's (FTA's) proposed Interim Guidance and Instructions: Small Starts Provision of the Section 5309 New Starts Program and requests your comments on it. The proposed guidance explains submission requirements and evaluation criteria that FTA plans to use to evaluate Small Starts projects in the interim period before publication of the Final Rule for Major Capital Investment Projects. FTA requests comments on the proposed interim guidance, which is available in DOT's electronic docket and on FTA's Web site.

**DATES:** Comments must be received by July 10, 2006. Late filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FTA–2006–24947] by any of the following methods:

Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.

*Fax:* 202–493–2251.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.

*Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You must include the agency name (Federal Transit Administration) and the docket number (FTA–2006–24947). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to the Department's Docket Management System (DMS) Web site located at *http://dms.dot.gov*. This means that if your comment includes any personal identifying information, such information will be made available to users of DMS.

**FOR FURTHER INFORMATION CONTACT:** Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 or *Ronald.Fisher@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### 1. Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), enacted on August 10, 2005, established a new ''Small Starts'' program category for projects that seek less than $75,000,000 in funding from the Federal Transit Administration's (FTA's) Section 5309 New Starts Program and that have a total project cost of less than $250,000,000. SAFETEA–LU called for FTA to issue regulations to implement this new program category. Authorizations for Small Starts begin in Fiscal Year 2007. In addition, SAFETEA–LU made a number of other changes in FTA's New Starts Program (for projects too large to qualify as a Small Start). Consistent with SAFETEA–LU requirements to do so, FTA published a notice in the **Federal Register** on January 19, 2006, providing proposed revisions to FTA's New Starts Policy and draft New Starts Program guidance. This notice indicated that changes in the New Starts program required by SAFETEA–LU would be subject to a subsequent rulemaking and provided additional material describing possible approaches to implementing the changes which would be the subject of that rulemaking. In addition, on January 30, 2006, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) related to implementation of the Small Starts program category. In both **Federal Register** notices, FTA indicated that it expected that a single regulation would be issued to cover both Small Starts and New Starts and that a later Notice of Proposed Rulemaking would be issued covering both programs. As promised in the January 19, 2006, notice, on May 22, 2006, FTA issued a notice responding to the comments received on the proposed New Starts policy changes and draft Program Guidance, announcing the final policy changes and making available the final Program Guidance.

The statutory language in section 5309(e) of Title 49, United States Code, which establishes the Small Starts category, provides for some significant differences for the Small Starts program in comparison to the requirements for larger New Starts projects in section 5309(d). The eligibility for funding is broader, including certain ''corridor-based bus capital projects,'' rather than only new ''fixed guideway'' systems and extensions. As noted above, projects are limited to those with a proposed section 5309 amount of less than $75,000,000 and a total project cost of less than $250,000,000. Recognizing the smaller size of the projects to be funded, a number of simplifications are put in place. First, the project justification criteria are simplified, focusing on three criteria—cost-effectiveness, public transportation supportive land use policies, and effect on local economic development—rather than the more extensive list provided for in section 5309(d). The criteria for local financial commitment have been simplified to focus only on a shorter term financial plan. The project development process has three steps—alternatives analysis, project development, and construction—rather than the four steps—alternatives analysis, preliminary engineering, final design, and construction—in the section 5309(d) process. Finally, the instrument used for implementing these Small Starts projects is a ''project construction grant agreement,'' which is to be structured as a streamlined version of the ''full funding grant agreement'' required for larger New Starts projects under section 5309(d).

#### 2. Summary

As noted in the May 22, 2006, notice, FTA received numerous comments on both the January 19, 2006, notice on New Starts and the January 30, 2006 ANPRM on Small Starts. It has become clear that the issues involved in developing the New Starts/Small Starts

regulations are complex. Given the depth of interest among FTA's stakeholders and the time needed to develop an NPRM, it is clear that it will not be possible for the NPRM to be developed and issued, comments received and addressed, and a Final Rule published before the start of Fiscal Year 2007. While the existing New Starts regulation can continue to be used to govern the New Starts program, the process in place is not consistent with the simplifications intended for the Small Starts program. FTA does not feel it would be consistent with the legislative intent for this new program category to require candidate projects for funding under this category to be subject to the same level of analysis now required for New Starts projects until a Final Rule can be promulgated. Thus, FTA has developed and is hereby making available proposed Interim Guidance on Small Starts. The proposed guidance is intended to allow project sponsors to begin to develop candidate Small Starts projects for evaluation and potential funding in fiscal year 2007 and to permit projects to be evaluated for possible inclusion in the fiscal year 2008 New Starts Report, to be issued in February 2007.

In developing the proposed Interim Guidance for Small Starts, FTA's primary goal was to account for the intent of SAFETEA–LU to develop project development processes and evaluation criteria that are simpler than those required for New Starts. At the same time, FTA recognizes that there may be additional streamlining steps that may be taken as part of the rulemaking process. On the other hand, the final results of the rulemaking process cannot yet be predicted. Pending the results of that process, FTA wants to make sure that project sponsors would not be faced with a situation in which project sponsors might have to be required to go back and do additional work to comply with the requirements in the Final Rule. Thus, the Interim Guidance is largely based on the current New Starts project development and evaluation process, simplified to account for those differences that are clearly defined in SAFETEA–LU. In addition, FTA has created a sub-category of Very Small Starts projects, which by their very nature will be rated as ''Medium''. While FTA is seeking comment on all aspects of the Interim Guidance, in particular, FTA is interested if there are other ways to streamline the financial reporting and land use requirements and whether it is appropriate, in the interim, to evaluate economic development as an ''Other Factor''. Furthermore, FTA seeks comments on its approach to using the same cost-effectiveness breakpoints that are currently applied to all New Starts projects, but adjusted upward using a nationally estimated 20-year growth forecast applied to the user benefits of the opening year to account for the additional user benefits that are expected to accrue from the project over a 20 year period. Project sponsors would not be required to submit anything other than opening year forecasts, as required by SAFETEA–LU, but projects would not be penalized by the fact that the current breakpoints were originally calculated assuming a 20 year forecast.

FTA will be exploring further simplification and process improvements both for Small Starts and New Starts as it develops the NPRM. Comments on the ANPRM, the January 19, 2006, notice, and the guidance made available by this notice will be taken into account in that process. FTA believes that the approach contained in the proposed Interim Guidance may be streamlined further in the NPRM and Final Rule. Project sponsors complying with the proposed Interim Guidance would thus be assured that they would easily comply with the Final Rule.

Although FTA is not providing a detailed summary of the comments received on the ANPRM at this time, FTA did take the comments into account in developing the proposed Interim Guidance. The proposed Interim Guidance is not intended to fully address all of the changes which may be proposed in the Final Rule. Further, the proposed Interim Guidance is being made available for comment at this time. Thus, FTA felt it was more appropriate to summarize the comment on both the original ANPRM and on this Notice when the NPRM is issued and it will summarize comments received on the proposed Interim Guidance when it is published as final in the **Federal Register**.

FTA has posted the proposed Interim Guidance on its Web site as well as in the docket for this notice. Comments should be made to the docket in accordance with the instructions provided above.

Issued in Washington, DC this 6th day of June 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

[FR Doc. E6–9030 Filed 6–8–06; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2006–24994]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CONUNDRUM.

**SUMMARY:** As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24994 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before July 10, 2006.

**ADDRESSES:** Comments should refer to docket number MARAD–2006 24994. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket

is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel CONUNDRUM is:

*Intended Use:* ''pleasure charter yacht for hire.''

*Geographic Region:* Atlantic Seaboard to Virgin Islands.

Dated: June 5, 2006.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. E6–8987 Filed 6–8–06; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number 2006–24995]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PHOENIX.

**SUMMARY:** As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24995 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before July 10, 2006.

**ADDRESSES:** Comments should refer to docket number MARAD–2006–24995. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PHOENIX is:

*Intended Use:* ''The primary intended use of the vessel is for marine research. The vessel may also be used for incidental commercial passenger operations.''

*Geographic Region:* The Gulf of Mexico region, including the states of Florida, Alabama, Mississippi, Louisiana and Texas, with also potential visits to the U.S. territories, including the Virgin Islands and Puerto Rico.

Dated: June 5, 2006.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. E6–8988 Filed 6–8–06; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2006–24323; Notice 2]**

### Volkswagen of America Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Volkswagen of America Inc. (Volkswagen) has determined that the designated seating capacity placards on certain vehicles that it produced in 2005 and 2006 do not comply with S4.3(b) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, ''Tire selection and rims.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on April 7, 2006, in the **Federal Register** (71 FR 17953). NHTSA received no comments.

Affected are a total of approximately 39 Phaeton vehicles produced between May 22, 2005 and March 8, 2006. S4.3(b) of FMVSS No. 110 requires that a ''placard, permanently affixed to the glove compartment door or an equally accessible location, shall display the * * * [d]esignated seating capacity.'' The noncompliant vehicles have placards stating that the seating capacity is five when in fact the seating capacity is four. Volkswagen has corrected the problem that caused these errors so that they will not be repeated in future production.

Volkswagen believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Volkswagen states that consumers will look at the number of seats and safety belts to determine the vehicle's capacity. Volkswagen explains that although the rear seat capacity on the placard states three, the vehicles have only two rear seats, and the space that would be occupied by a middle-occupant position contains a center console.

Volkswagen further states that, because the rear seats do not accommodate three people, the seating capacity labeling error has no impact on the vehicle capacity weight, recommended cold tire inflation pressure, or recommended size designation information. Also, Volkswagen says that it is impossible to overload the rear seat by relying on the incorrect designated seating capacity information.

NHTSA agrees with Volkswagen that the noncompliance is inconsequential to motor vehicle safety. Although the placard states a rear seat capacity of three, a consumer can easily determine the seating capacity by looking at the number of rear seats and occupant restraints, which clearly indicate a seating capacity of two with a center console. Further, the mislabeling does not affect the vehicle capacity weight, recommended cold tire inflation

pressure, recommended tire size designation, or the potential to overload the rear seat.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: June 5, 2006.

**Daniel C. Smith,**

*Associate Administrator for Enforcement.*

[FR Doc. E6–8979 Filed 6–8–06; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** List of Application Delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

**Key to ''Reason for Delay''**

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

**Meaning of Application Number Suffixes**

N—New application.
M—Modification request.
X—Renewal.
PM—Party to application with modification request.

Issued in Washington, DC on June 05, 2006.

**R. Ryan Posten,**

*Chief, Special Permits Program, Office of Hazardous Materials Safety, Special Permits & Approvals.*

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| | **New Special Permit Applications** | | |
| 13341–N ..... | National Propane Gas Association, Washington, DC | 3 | 07–31–2006 |
| 13347–N ..... | Amvac Chemical Corporation, Los Angeles, CA | 4 | 06–30–2006 |
| 13563–N ..... | Applied Companies, Valencia, CA | 1 | 07–31–2006 |
| 14184–N ..... | Global Refrigerants,Inc., Denver, CO | 4 | 06–30–2006 |
| 14229–N ..... | Senex Explosives, Inc., Cuddy, PA | 4 | 06–30–2006 |
| 14239–N ..... | Marlin Gas Transport, Inc., Odessa, FL | 1 | 06–30–2006 |
| 14257–N ..... | Origin Energy American Samoa, Inc., Pago Pago, AS | 4 | 06–30–2006 |
| 14270–N ..... | Piper Metal Forming Corporation, New Albany, MS | 3, 4 | 08–31–2006 |
| 14267–N ..... | Department of Energy, Washington, DC | 1 | 06–30–2006 |
| 14289–N ..... | City Machine & Welding, Inc., Amarillo, TX | 4 | 08–31–2006 |
| 14285–N ..... | INO Therapeutics LLC, Port Allen, LA | 4 | 08–31–2006 |
| 14283–N ..... | U.S. Department of Energy (DOE), Washington, DC | 1 | 06–30–2006 |
| 14277–N ..... | Ascus Technologies, Ltd., Cleveland, OH | 3, 4 | 08–31–2006 |
| 14266–N ..... | NCF Industries, Inc., Santa Maria, CA | 3 | 08–31–2006 |
| 14237–N ..... | Advanced Technology Materials, Inc. (ATMI), Danbury, CT | 1 | 08–31–2006 |
| 14232–N ..... | Luxfer Gas Cylinders—Composite Cylinder Division, Riverside, CA | 4 | 06–30–2006 |
| 14221–N ..... | U.S. Department of Energy, Washington, DC | 4 | 06–30–2006 |
| 14163–N ..... | Air Liquide America, L.P., Houston, TX | 4 | 06–30–2006 |
| | **Modification to Special Permits** | | |
| 11903–M ..... | Comptank Corporation, Bothwell, ON | 4 | 06–30–2006 |
| 13182–M ..... | Cytec Industries Inc., West Paterson, NJ | 3, 4 | 06–30–2006 |
| 14237–M ..... | Austin Powder Illinois Company, Cleveland, OH | 3, 4 | 06–30–2006 |
| 13583–M ..... | Structural Composites Industries, Pomona, CA | 3, 4 | 06–30–2006 |

[FR Doc. 06–5237 Filed 6–8–06; 8:45 am]
BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. MC–F–21017]**

### Grupo Senda Autotransporte, S.A. de C.V. & Turimex del Norte, S.A. de C.V.—Acquisition of Control-Coach Investments LLC

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice Tentatively Approving Finance Transaction.

**SUMMARY:** Grupo Senda Autotransporte, S.A. de C.V. (Grupo Senda), and Turimex del Norte, S.A. de C.V. (TDN) (collectively, Applicants), have filed an application under 49 U.S.C. 14303 to acquire control of Coach Investments LLC (Coach), by acquiring substantially all of the outstanding stock of Coach from David Rodriguez Benitez, Jaime Protasio Rodriguez Benitez, Alberto Rodriguez Benitez, and Maria Elena Rodriguez Benitez (collectively, Rodriguez Siblings). Coach currently controls Turimex LLC (Turimex), a federally regulated motor carrier of passengers. Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

**DATES:** Comments must be filed by July 24, 2006. Applicants may file a reply by August 8, 2006. If no comments are filed by July 24, 2006, this notice is effective on that date.

**ADDRESSES:** Send and original and 10 copies of any comments referring to STB Docket No. MC–F–21017 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to the Applicants' representatives: Don H. Hainbach and Erin M. Tallardy, Garofalo Goerlich Hainbach PC, 1200 New Hampshire Ave., NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Davis, (202) 565–1608 [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

**SUPPLEMENTARY INFORMATION:** TDN is a variable capital corporation, with its principal place of business in Mexico, where it provides scheduled passenger transportation. Grupo Senda, a noncarrier holding company located in Mexico, is the majority owner (98%) of TDN.[1] Grupo Senda owns Transportes Tamaulipas, S.A. de C.V. (TT), a motor carrier that operates primarily in Mexico, but also holds federally issued authority under MC–700041. TT is the majority owner (51%) of Autobuses Coahuilenses, S.A. de C.V., a motor carrier that operates primarily in Mexico, but also holds federally issued authority under MC–434199. The carriers involved in the transaction satisfy the jurisdictional threshold of having gross operating revenues in excess of $2 million during a recent 12-month period.

Coach, a noncarrier, is equally owned by the Rodriguez Siblings. Coach, in turn, owns 100% of the shares of Turimex.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Grupo Senda and TDN have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transaction will have no impact on the adequacy of transportation services available to the public, that the proposed transaction will not have an adverse effect on total fixed charges, and that the interests of employees of TDN will not be adversely impacted. Additional information, including a copy of the application, may be obtained from the Applicants' representatives.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

[1] Grupo Senda is owned by the Rodriguez Siblings, Jaime Rodriguez Silva, and Maria Elena Benitez de Rodriguez.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered*

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective July 24, 2006, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: June 2, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E6–8942 Filed 6–8–06; 8:45 am]
BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Citizens Coinage Advisory Committee June 2006 Public Meeting

*Summary:* Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces a Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for June 15, 2006.

*Date:* June 15, 2006.

*Time:* 10 a.m. to 11 a.m.

*Location:* The meeting will occur via teleconference. Interested members of the public may attend the meeting at the United States Mint; 801 Ninth Street, NW.; Washington, DC; 2nd floor.

*Subject:* Review coin design candidates and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and location. Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events,

persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

• Make recommendations with respect to the mintage level for any commemorative coin recommended.

*For Further Information Contact:* Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: June 6, 2006.

**David A. Lebryk,**

*Deputy Director, United States Mint.*

[FR Doc. E6–9083 Filed 6–8–06; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Friday,
June 9, 2006

# Part II

# Department of Transportation

**Federal Highway Administration**
**23 CFR Parts 450 and 500**
**Federal Transit Administration**
**49 CFR Part 613**

**Statewide Transportation Planning; Metropolitan Transportation Planning; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Parts 450 and 500**

**Federal Transit Administration**

**49 CFR Part 613**

**[Docket No. FHWA–2005–22986]**

**FHWA RIN 2125–AF09; FTA RIN 2132–AA82**

## Statewide Transportation Planning; Metropolitan Transportation Planning

**AGENCIES:** Federal Highway Administration (FHWA); Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA and the FTA are jointly issuing this document which proposes the revision of regulations governing the development of metropolitan transportation plans and programs for urbanized areas, State transportation plans and programs and the regulations for Congestion Management Systems and invites public comment. This proposed revision results from the recent passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), which also incorporates changes initiated in its predecessor legislation, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, June 9, 1998) and generally would make the regulations consistent with current statutory requirements. Interested parties are invited to send comments regarding all facets of this proposal.

**DATES:** Comments must be received on or before September 7, 2006.

**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, submit electronically at *http://dms.dot.gov* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.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 may print the acknowledgement page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 53, Number 70, Pages 19477–78) or may visit *http://dms.dot.gov/.*

**FOR FURTHER INFORMATION CONTACT:** For the FHWA: Mr. Larry D. Anderson, Planning Oversight and Stewardship Team (HEPP–10), (202) 366–2374, Mr. Robert Ritter, Planning Capacity Building Team (HEPP–20), (202) 493–2139, or Ms. Diane Liff, Office of the Chief Counsel (HCC–10), (202) 366–6203. For the FTA: Mr. Charles Goodman, Office of Planning and Environment, (202) 366–1944, Ms. Carolyn Mulvihill, Office of Planning and Environment, (202) 366–2258, or Mr. Christopher VanWyk, Office of Chief Counsel, (202) 366–1733. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m for FHWA, and 9 a.m. to 5:30 p.m. for FTA, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

Interested parties may submit or retrieve comments online through the Docket Management System (DMS) at *http://dms.dot.gov.* The DMS Web site is available 24 hours each day, 365 days each year. Follow the instructions online. Additional assistance is available at the help section of the Web site.

An electronic copy of this notice of proposed rulemaking may be downloaded using the Office of the Federal Register's Web page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/index.html.*

### Background

*Statement of the Problem*

The joint FHWA/FTA rules governing statewide and metropolitan transportation planning have remained unchanged since the agencies originally promulgated these rules on October 28, 1993 (58 FR 58064) in response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991). Two statutory changes—the TEA–21 and the SAFETEA–LU—have occurred in the intervening years. The FHWA and the FTA, State Departments of Transportations (DOTs), Metropolitan Planning Organizations (MPOs), public transportation operators and the transportation community at large have evolved, and technology has improved. The proposed revisions would recognize the changes that have occurred in the last 12 years and bring the regulation up to date. We invite comments on all aspects of the proposed regulation, including the clarity of its requirements and any anticipated operational issues.

The existing rules have not been revised or amended since issuance in 1993, with two exceptions: The temporary waiver of certain metropolitan transportation planning and transportation conformity requirements for the New York City metropolitan area in response to the September 11, 2001, terrorist attacks (67 FR 62373, October 7, 2002), which has ended, and the requirement for States to establish, implement, and periodically review and revise a documented consultation process(es) with non-metropolitan local officials (68 FR 3181, January 23, 2003). The proposed regulations would not change the requirements related to State consultation with non-metropolitan local officials.

Section 1308 of the TEA–21 required the Secretary to eliminate the major investment study set forth in Section 450.318 of title 23, Code of Federal Regulations, as a separate requirement, and promulgate regulations to integrate such requirement, as appropriate, as part of the analyses required to be undertaken pursuant to the planning provisions of title 23, U.S.C. and title 49, U.S.C., Chapter 53 and the National Environmental Policy Act of 1969 (NEPA) for Federal-aid highway and transit projects. In addition, Section 3005 of SAFETEA–LU requires the Secretary to issue regulations setting standards for the Annual Listing of Projects required in 23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B) as amended by SAFETEA–LU. The proposed regulations are intended to satisfy these requirements.

*History*

*SAFETEA–LU.* Section 6001 of the SAFETEA–LU amended 23 U.S.C. 134 and 135, to require a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and States. Similar changes were made to 49 U.S.C. 5303–5306 by sections 3005, 3006 and 3007 of the SAFETEA–LU, which address the

metropolitan and statewide transportation planning processes in the context of the FTA's responsibilities. Section 1308 of TEA–21, which requires the Secretary of Transportation to eliminate the major investment study as a separate requirement and, as appropriate, integrate the requirement into the transportation planning and National Environmental Policy Act (NEPA) processes, was not changed by the SAFETEA–LU and remains in effect.

*Prior Rulemaking.* On May 25, 2000, the FHWA and the FTA jointly published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 33922) proposing amendments to the existing metropolitan and statewide transportation planning regulations 23 CFR part 450 and 49 CFR part 613. Concurrently, the FHWA and the FTA jointly proposed to redesignate and amend existing regulations to further emphasize using the NEPA process to facilitate effective and timely transportation planning decisionmaking (65 FR 33959, May 25, 2000). The metropolitan and statewide transportation planning and NEPA NPRMs were issued concurrently to further the goal of the FTA and the FHWA to better coordinate the planning processes with project development activities and decisions associated with the NEPA process. On July 7, 2000 (65 FR 41891), a supplemental notice was published to extend the comment period on both NPRMs until September 23, 2000.

More than 400 documents (representing slightly more than 300 discrete comments) were submitted to that docket, distributed relatively equally among three primary sources: State DOTs, MPOs, and various other transportation stakeholder groups.

During the comment period, the U.S. Senate Committee on Environment and Public Works and the U.S. House Committee on Transportation and Infrastructure held hearings regarding the NPRMs on September 12 and 13, 2000, respectively, focused on the intent of TEA–21 and possible burdens on State DOTs and MPOs that would not, it was asserted, result in increased efficiency and effectiveness of the planning or project development processes.

In response to the number, extent, and nature of the concerns, as well as in anticipation of further imminent statutory guidance (although, as it turned out, the SAFETEA–LU would not be enacted until 2005), the FHWA and FTA issued a notice in the September 20, 2002, **Federal Register** (67 FR 59219) withdrawing the NPRM.[1]

In the years since the May 2000 NPRM, transportation planning has continued to evolve. For example, the 2000 census identified increased urbanization, requiring the designation of additional metropolitan areas and establishment of additional MPOs and new Transportation Management Areas (TMAs). The TEA–21 provided increased funds for transportation planning. Improved technologies such as Geographic Information Systems (GIS), the proliferation of Internet use, and improved data collection and processing have allowed planners to analyze more data and provide new ways to share information. New partners, such as freight carriers and shippers, are engaged in the process. The nation increasingly competes in a global economy, with greater emphasis on the need to move freight efficiently, and a greater recognition for the need to maximize the use and efficiency of the existing transportation system. The planning regulations need to be updated to respond to these and other related changes, as well as to the new statutory mandates of the SAFETEA–LU.

*Interim Guidance*

After withdrawing the NPRM, the FHWA and the FTA developed and issued a number of guidance documents to provide direction to State DOTs, MPOs and public transportation operators in implementing the TEA–21 statutory provisions. These are summarized below:

On February 2, 2001, the FHWA and the FTA jointly issued ''Implementing TEA–21 Planning Provisions'',[2] which provided information on how to proceed with the TEA–21 statutory planning requirements, noting that ''Although new planning regulations have not been issued, the requirements in TEA–21 are in effect.'' Under this guidance, the FHWA and the FTA field offices were to work with MPOs, State DOTs, and transit operators ''to ensure a basic level of compliance with TEA–21 planning requirements, based on the statutory language.'' The guidance focused on the following new TEA–21 requirements: (a) Annual listing of projects; (b) revenue estimates for transportation plans and TIPs; (c) State consultation with local officials in non-metropolitan areas; (d) consultation with transit users and freight shippers and service providers; (e) MIS integration; (f) Federal planning finding for STIP approvals; (g) consolidation of planning factors; and (h) public involvement during certification reviews. These requirements continue, some enhanced, in SAFETEA–LU.

Subsequently, on February 22, 2005, the FHWA and the FTA issued joint ''Program Guidance on Linking the Transportation Planning and NEPA Processes.'' [3] This guidance, developed for use by State DOTs, MPOs, and public transportation operators, summarized and further explained provisions in current law and regulation, and provided direction on how information, analysis, and products from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306) could be incorporated into and relied upon in the NEPA process under existing Federal statutes and regulations. This guidance is included in this proposal as Appendix A to part 450. A companion legal analysis outlining authority under current law was also issued on February 22, 2005.[4] Appendix A reiterates the statutory provision that transportation plans and programs are exempt from NEPA review. Development of Appendix A involved outreach to key national transportation planning stakeholder groups (American Association of State Highway and Transportation Officials (AASHTO), the Association of Metropolitan Planning Organizations (AMPO), the National Association of Regional Councils (NARC), the American of Public Transportation Association (APTA), and the Surface Transportation Policy Project (STPP) as well as Federal environmental, regulatory, and resource agencies.

On March 10, 2005, the FHWA issued a memorandum on Wetland and Natural Habitat Mitigation that emphasized that wetland and natural habitat mitigation measures, such as wetland and habitat banks or statewide and regional

[1] The FHWA and the FTA proceeded with a separate rulemaking effort to address the issue of State consultation with non-metropolitan local officials. A final rule on that issue was published January 23, 2003 (68 FR 3181).

[2] This joint guidance is available via the Internet at the following URL:*http://www.fhwa.dot.gov/hep/tea21mem.htm.*

[3] This joint guidance is available via the Internet at the following URL: *http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/aa5aec9f63be385c852568cc0055ea16/9fd918150ac2449685256fb10050726c?OpenDocument.*

[4] This joint guidance is available via the Internet at the following URL: *http://nepa.fhwa.dot.gov/renepa/renepa.nsf/All+Documents/9FD918150AC2449685256FB10050726C/$FILE/Planning-NEPA%20guidance,%20legal,%20final,%202–22–05.doc or http://nepa.fhwa.dot.gov/renepa/renepa.nsf/All+Documents/9FD918150AC2449685256FB10050726C/$FILE/Planning-NEPA%20guidance,%20legal,%20final,%202–22–05.pdf.*

conservation measures, are eligible for Federal-aid participation when they are undertaken to create mitigation resources for future transportation projects. In its memorandum, the FHWA clarified that, to provide for wetland or other mitigation banks, the State DOT and the FHWA Division Office should identify potential future wetlands and habitat mitigation needs for a reasonable time frame and establish a need for the mitigation credits. The transportation planning process should guide the determination of future mitigation needs. (*See http://www.fhwa.dot.gov/environment/wetland/wethabmitmem.htm.*) The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) have also announced proposed revisions to regulations governing compensatory mitigation for authorized impacts to wetlands, streams, and other waters of the U.S. under Section 404 of the Clean Water Act. (*See* 71 FR 15520 (March 28, 2006).) These revisions are designed to improve the effectiveness of compensatory mitigation at replacing lost aquatic resource functions and area, expand public participation in compensatory mitigation decision-making, and increase the efficiency and predictability of the process of proposing compensatory mitigation and approving new mitigation banks.

On March 30, 2005, the FHWA and the FTA issued joint ''Guidance on Designation and Redesignation of MPOs.'' [5] This guidance, designed to address inconsistencies that existed between 23 U.S.C. 134, 49 U.S.C. 5303, and 23 CFR Part 450 regarding the designation and redesignation of MPOs, provided clarifying information and illustrative examples of scenarios that do and do not trigger MPO redesignations, based on several actual events that transpired since the enactment of TEA–21.

On April 12, 2005, the FHWA and the FTA jointly issued ''Planning Horizons for Metropolitan Long Range Transportation Plans.'' [6] This guidance provided updated and clarified information on the ''planning horizon'' requirement for metropolitan long-range transportation plans. The guidance required that metropolitan long-range transportation plans (*see* 23 CFR 450.322(a)) shall address ''at least a 20-year planning horizon.'' Furthermore, the guidance allowed the FHWA and the FTA to take actions on STIPs/TIPs and associated amendments or transportation conformity determinations with an MPO long-range transportation plan initially adopted with a minimum 20-year planning horizon. However, if the long-range transportation plan is amended to add, delete, or significantly change a regionally significant project (in any metropolitan area), the transportation plan's horizon should be at least 20 years at the time of the MPO action.

On June 30, 2005, the FHWA and the FTA jointly issued ''Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans.'' [7] This guidance summarized and described in detail the ISTEA and TEA–21 fiscal constraint requirements to ensure that transportation plans and programs reflect realistic assumptions on capital, operations, and maintenance costs associated with the surface transportation system. This guidance is included in this proposal as Appendix B to Part 450.

On September 2, 2005, the FHWA and the FTA jointly issued ''Interim Guidance for Implementing Key SAFETEA–LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities.'' [8] This guidance was issued after the enactment of the SAFETEA–LU to inform the FHWA and the FTA field offices on how to implement SAFETEA–LU provisions. related to transportation planning, air quality, and environment. This guidance established the following interim implementation schedule and requirements: (a) Statewide and metropolitan transportation plans and programs under development at the time of SAFETEA–LU enactment could be completed under TEA–21 requirements and schedules; (b) transportation plans and programs adopted after July 1, 2007, must comply with all the SAFETEA–LU planning provisions; (c) States or MPOs opting to implement the SAFETEA–LU requirements prior to July 1, 2007, must satisfy all the SAFETEA–LU provisions prior to adoption of transportation plans and programs; and (d) FHWA/FTA certifications of Transportation Management Areas (TMAs) would be extended to four years (except for any existing ''conditional'' certifications, which must be completed as previously scheduled).

[5] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/mpodes.htm.*

[6] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/planhorz.htm.*

[7] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

[8] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/hep/igslpja.htm.*

**Development of the Proposed Regulation**

The proposed revised regulations reflect the requirements of the SAFETEA–LU, including requirements first mandated in the TEA–21. To implement these legislative mandates, we have adhered closely to the statutory language in drafting the regulation. Over time, and as necessary, the FHWA and FTA will continue to issue additional guidance and disseminate information on noteworthy practices.

**Approach to Structure of Proposed Regulation**

While the statutory changes resulting from the SAFETEA–LU form a large basis for the proposed regulation, several pre-existing regulatory provisions not specifically mentioned in the SAFETEA–LU remain relevant for carry over into the new rule. The statute alone does not fully present all the connections between various regulatory provisions nor define program stewardship and oversight mechanisms. Oversight mechanisms such as FHWA/FTA certification reviews of TMAs and the FHWA/FTA planning finding to support approval of the STIP have been effectively used to ensure compliance and to add value for promoting continuous improvement in the statewide and metropolitan transportation planning process.

Close adherence to the legislative mandate, described in ''Key Statutory Changes'' below, and further highlighted in the ''Section by Section Discussion,'' means that additional regulatory language was generally not included in the revised regulation if it expanded significantly on legislative language. In some cases, which will be noted below, other factors, such as court decisions or Presidential directives, required change and amplification. In these instances, however, we have tried to keep supplemental, non-statutory language to a minimum in the proposed regulations, except where clarification would assist compliance. In most cases, State DOTs, MPOs, transportation stakeholders, and the public are familiar and experienced in using existing practices.

We also propose to clarify and revise the regulation's section headings to use plainer language, as described below. The organization of each section and general structure reflects, mostly unchanged, the existing regulation, except as indicated in the ''Section by Section Discussion''.

The FHWA and FTA have conducted routine coordination/outreach activities with major transportation stakeholders,

including regular participation in national and regional conferences and meetings on transportation planning issues, that provided important insight and perspective on the transportation planning process. In addition to these meetings, the FHWA and the FTA met with transportation stakeholder organizations as appropriate to understand the state-of-the-practice of transportation planning and recent or emerging policy concerns, identify noteworthy practices, and highlight outstanding transportation planning initiatives. Through programs such as the Transportation Planning Capacity Building Program,[9] the FHWA and the FTA have reached out to the transportation planning community to provide technical assistance and technology transfer and strengthen the transportation planning processes. Further, the FHWA and the FTA have worked with State DOTs, MPOs, and public transportation operators through their professional associations to discuss proposed guidance and statutory changes, and to implement improvements to the transportation planning process.

In developing the regulation, the knowledge we have gained regarding concerns and operations of our program stakeholders has assisted our understanding of the effect of both statute and regulations in a real world environment, enabled us to anticipate and address stakeholders' issues and concerns, and has made us attentive to the need to issue and administer regulations that are flexible to apply across the United States. For example, we propose retaining the existing rule language on separate and discrete State consultation processes with non-metropolitan local officials based on stakeholders' past concerns.

These proposed rules were developed by an interagency and multidisciplinary task force of transportation planners, engineers and environmental specialists of the FHWA and the FTA, with input from other Federal agencies and components of the Office of the Secretary of Transportation. The task force reviewed legislation and input received from partners and stakeholders. In addition, comments were solicited from the field staffs of the FHWA and the FTA.

*Key Statutory Changes*

Although substantial portions of the SAFETEA–LU sections 3005, 3006, and 6001 mirror previous law, there are several key statutory changes and new requirements, summarized below:

Metropolitan Planning

*New Planning Factor:* Security and safety of the transportation system are stand-alone planning factors, signaling an increase in importance from prior legislation, in which security and safety were coupled in the same planning factor. (23 U.S.C. 134(h)(1)(C) and 49 U.S.C. 5303(h)(1)(C).

*Expanded Planning Factor:* The TEA–21 planning factor related to environment was expanded to include ''promote consistency between transportation improvements and State and local planned growth and economic development patterns.'' (23 U.S.C. 134(h)(1)(E) and 49 U.S.C. 5303(h)(1)(E)).

*Metropolitan Transportation Plans:* The requirement for metropolitan transportation plans to cover a 20-year minimum plan horizon at the time of adoption is maintained. The SAFETEA–LU statutorily established time frames for updating metropolitan transportation plans. For air quality nonattainment and maintenance areas, transportation plans shall be updated at least every four years (compared to a three-year update cycle in the regulations implementing ISTEA). The requirement for attainment area MPOs to update transportation plans at least every five years remains unchanged from the regulations.

*Environmental Mitigation Activities in Metropolitan Transportation Plans:* Metropolitan transportation plans shall include a discussion of potential environmental mitigation activities, to be developed in consultation with Federal, State and Tribal wildlife, land management, and regulatory agencies. (23 U.S.C. 134(i)(2)(B) and 49 U.S.C. 5303(i)(2)(B)).

*New Consultations:* MPOs shall consult ''as appropriate'' with ''State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation'' in developing metropolitan transportation plans (23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4)).

*Participation Plan:* MPOs must develop and utilize a ''Participation Plan'' that provides reasonable opportunities for interested parties to comment on the content of the metropolitan transportation plan and metropolitan TIP. Further, this ''Participation Plan'' must be developed ''in consultation with all interested parties.'' (23 U.S.C. 134(i)(5)(B) and 49 U.S.C. 5303(i)(5)(B)).

*Congestion Management Processes in Transportation Management Areas (TMAs):* Within a metropolitan planning area serving a TMA, there must be ''a process that provides for effective management and operation'' to address congestion management (23 U.S.C. 134(k)(3)) and 49 U.S.C. 5303(k)(3)).

*Operational and Management Strategies in Transportation Plans:* Metropolitan transportation plans shall include operational and management strategies to improve the performance of the existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods (23 U.S.C. 134(i)(2)(D)) and 49 U.S.C. 5303(i)(2)(D)).

*TIP Cycles and Scope:* TIPs are to be updated at least every four years (compared to at least every two years in ISTEA and TEA–21). In addition, TIPs must include projects covering four years (compared to three years in ISTEA and TEA–21) (23 U.S.C. 134(j)(1)(D) and 134(j)(2)(A) and 49 U.S.C. 5303(j)(1)(D) and 5303(j)(2)(A)).

*Visualization Techniques in Metropolitan Transportation Plan and TIP Development:* As part of transportation plan and TIP development, MPOs shall employ visualization techniques to the maximum extent practicable (23 U.S.C. 134(i)(5)(C)(ii) and 49 U.S.C. 5303(i)(5)(C)(ii)).

*Publication of the Metropolitan Transportation Plan and TIP:* MPOs shall publish or otherwise make available for public review transportation plans and TIPs ''including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web'' (23 U.S.C. 134(i)(6) and 49 U.S.C. 5303(i)(6) on transportation plans and 23 U.S.C. 134(j)(7)(a) and 49 U.S.C. 5303(j)(7)(a) on TIPs).

*Annual Listing of Obligated Projects:* This TEA–21 requirement is retained, but the development of the annual listing ''shall be a cooperative effort of the State, transit operator, and MPO.'' For clarity, two new project types (investments in pedestrian walkways and bicycle transportation facilities) for which Federal funds have been obligated in the preceding year in the metropolitan planning area are emphasized (23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B)).

*TMA Certification Cycle:* FHWA/FTA must certify each TMA planning process

[9] The Transportation Planning Capacity Building (TPCB) Program is a collaborative effort of FHWA and the FTA with various public and private organizations. Broadly speaking, it exists to help State and local transportation staff meet their complex political, social, economic, and environmental demands. On a practical level, the TPCB Program provides information, training, and technical assistance to help transportation professionals create plans and programs that respond to the needs of the many users of their local transportation systems.

at least every four years (compared to every three years in ISTEA and TEA–21) (23 U.S.C. 134(k)(5)(A)(ii) and 49 U.S.C. 5303(k)(5)(A)(ii)).

*Strategic Highway Safety Plan (SHSP):* State must develop a strategic highway safety plan that identifies and analyzes safety problems and opportunities in order to use Highway Safety Improvement Program funds for new eligible activities under 23 U.S.C. 148.

*Coordinated Public Transit-Human Services Transportation Plan:* Sections 3012, 3018, and 3019 of the SAFETEA–LU require that proposed projects under three FTA formula funding programs (Special Needs of Elderly Individuals and Individuals with Disabilities (49 U.S.C. 5310(d)(2)(B)(i) and (ii)); Job Access and Reverse Commute (49 U.S.C. 5316(g)(3)(A) and (B)); and New Freedom (49 U.S.C. 5317(f)(3)(A) and (B)) must be derived from a locally developed public transit-human services transportation plan. This plan must be developed through a process that includes representatives of public, private, and non-profit transportation and human services providers, as well as the public. And, an areawide solicitation for applications for grants under the latter two programs above shall be made in cooperation with the appropriate MPO.

Statewide Planning

*New Planning Factor:* Security and safety of the transportation system are stand-alone planning factors, signaling an increase in importance from prior legislation, in which security and safety were in the same planning factor (23 U.S.C. 135(d)(1)(C) and 49 U.S.C. 5304(d)(1)(C)).

*Expanded Planning Factor:* The TEA–21 planning factor related to environment was expanded to include ''promote consistency between transportation improvements and State and local planned growth and economic development patterns'' (23 U.S.C. 135(d)(1)(E) and 49 U.S.C. 5304(d)(1)(E)).

*Environmental Mitigation Activities in Long-Range Statewide Transportation Plans:* Long-range statewide transportation plans shall include a discussion of potential environmental mitigation activities, to be developed in consultation with Federal, State and Tribal wildlife, land management, and regulatory agencies (23 U.S.C. 135(f)(4) and 49 U.S.C. 5304(f)(4)).

*New Consultations:* States shall consult ''as appropriate'' with ''State, local, and Federally-recognized Tribal agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation'' in developing the long-range statewide transportation plan (23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D)).

*STIP Cycles and Scope:* STIPs are to be updated at least every four years (compared to at least every two years in ISTEA and TEA–21). In addition, STIPs must include projects covering four years (compared to three years in the ISTEA and the TEA–21) (23 U.S.C. 135(g)(1) and 49 U.S.C. 5304(g)(6)).

*Visualization Techniques in Long-Range Statewide Transportation Plan Development:* States shall employ visualization techniques in the development of the Long-Range Statewide Transportation Plan to the maximum extent practicable (23 U.S.C. 135(f)(3)(B)(ii) and 49 U.S.C. 5304(f)(3)(B)(ii)).

*Publication of the Long-Range Statewide Transportation Plan:* States shall publish or otherwise make available for public review the long-range statewide transportation plan ''including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web'' (23 U.S.C. 135(f)(8) and 49 U.S.C. 5304(f)(8)).

*Strategic Highway Safety Plan (SHSP):* State must develop a strategic highway safety plan that identifies and analyzes safety problems and opportunities in order to use Highway Safety Improvement Program funds for new eligible activities under 23 U.S.C. 148.

*State Highway Safety Improvement Program Projects in the STIP:* Projects or strategies contained in the State highway safety improvement program from the State strategic highway safety plan must be consistent with the requirements of the STIP (23 U.S.C. 148(a)(5)).

*Indian Reservation Road Projects in the STIP:* ''Funds available to Indian tribes for Indian reservation roads shall be expended on projects identified in a transportation improvement program approved by the Secretary'' (23 U.S.C. 202).

**Section-by-Section Discussion**

**Subpart A—Transportation Planning and Programming Definitions**

*Section 450.100 Purpose*

Existing § 450.100 would be largely retained.

*Section 450.102 Applicability*

Existing § 450.102 would be retained without change.

*Section 450.104 Definitions*

Existing § 450.104 would be retained, with terms and definitions, as follows.

We propose a definition for ''administrative modification'' to describe a type of revision to a long-range statewide or metropolitan transportation plan, TIP or STIP that is not significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). This term, along with ''amendment'' are the two types of ''revisions.''

''Alternatives analysis'' would be defined to reflect the FTA's Capital Investment Grant Program (49 U.S.C. 5309).

We propose a definition for ''amendment'' to describe a type of revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). This term, along with ''administrative modification'' are the two types of ''revisions.''

''Attainment area'' would be defined as reflected in the Transportation Conformity Reference Guide.[10]

We propose to include ''available funds'' and ''committed funds'' based on the FHWA/FTA Interim Guidance on Fiscal Constraint.[11]

''Conformity,'' and ''conformity lapse'' would be defined as reflected in the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

We propose a definition for ''congestion management process'' to reflect the SAFETEA–LU language.

We propose a definition for ''consideration'' to reflect a basic level of attention to other planning issues, as opposed to more substantial review under ''consultation'' and ''cooperation,'' in preparing transportation plans and programs.

''Consultation'' would remain largely unchanged, with minor revisions to reflect that consultation may occur between more than two parties.

''Cooperation'' would be slightly revised to reflect current legislation and practice.

''Coordinated public transit-human service transportation plan'' would be defined to reflect 49 U.S.C. 5316(g)(3).

''Coordination'' would be slightly revised to reflect current legislation and practice.

[10] The Transportation Conformity Reference Guide is available via the Internet at *http://www.fhwa.dot.gov/environment/conformity/ref_guid/coverpag.htm.*

[11] Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs, and Metropolitan Plans (issued on June 30, 2005) available on the internet at *http://www.fhwa.dot.gov/planning/fcindex.htm.*

''Design concept'' and ''design scope'' would be defined as reflected in the EPA's transportation conformity rule at 40 CFR 93.101.

We propose to include definitions of: ''environmental mitigation activities,'' ''Federal land management agency,'' ''Federally funded non-emergency transportation services,'' ''financially constrained'' or ''fiscal constraint,'' ''financial plan,'' and ''freight shippers''.

The definition of ''Governor'' would be retained.

''Illustrative project'' would be added to reflect new legislative provisions from the TEA–21 and 23 U.S.C. 134(i)(2)(C) and 135(f)(5) and 49 U.S.C. 5303(i)(2)(C) and 5304(f)(5).

''Indian Tribal government'' would be added based on the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

''Intelligent transportation systems (ITS)'' would be added to reflect new legislative provisions from the TEA–21 and 23 U.S.C. 134(h)(1)(A) and 23 U.S.C. 135(d)(A) and 49 U.S.C. 5304(d)(A) and 49 U.S.C. 5309(e)(10)(B).

We propose to include definitions of: ''interim metropolitan transportation plan'' and ''interim transportation improvement program''.

''Long-range statewide transportation'' would be slightly revised and renamed from the former ''statewide transportation plan'' to reflect new statutory language from 23 U.S.C. 135(f) and 49 U.S.C. 5304(f).

''Maintenance area'' would be revised to reflect the EPA definition used in the conformity regulation at 40 CFR part 93.101.

''Major metropolitan transportation investment'' would be removed to reflect the legislative provision from Section 1308 of the TEA–21.

''Management system'' would be retained in consideration of their extensive use by States, although the requirement for maintaining them was eliminated by legislative changes in the National Highway System Designation Act of 1995 (Pub. L. 104–59; November 28, 1995).

''Metropolitan planning area'' (MPA) and ''metropolitan planning organization'' (MPO) would be revised to reflect legislative changes in 23 U.S.C. 134(b) and 49 U.S.C. 5303(b). Importantly, the term ''MPO'' refers to the policy board for the organization that is designated under 23 U.S.C. 134 and 49 U.S.C. 5303.

''Metropolitan transportation plan'' would remain unchanged, except for legislative references.

''National Ambient Air Quality Standards'' would be defined, using legislative language from the Clean Air Act (42 U.S.C. 7401 *et seq*).

''Nonattainment area'' would remain unchanged, except for legislative references.

''Non-metropolitan area'' and ''non-metropolitan local official'' would remain unchanged.

A definition is proposed for ''operational and management strategies'' to reflect the legislative policy directions from the SAFETEA–LU.

We propose to add definitions for the terms ''obligated projects,'' and ''project selection''.

''Provider of freight transportation services'' would be added as described for freight-related industries in the Transportation Warehousing Sector 48–49 of the North American Industrial Classification System.

We propose to add a definition for ''regional ITS architecture,'' as set forth in the National ITS Architecture Consistency Policy for Transit Projects (Number C–01–03) and FHWA regulations on ITS architecture and standards (23 CFR parts 655 and 940).

The definition of ''regionally significant project'' would be retained, with some clarifying revisions.

We propose a definition for ''Regional Transit Security Strategy'' that is aligned with the concept required by the Department of Homeland Security.

We propose a definition for ''revision'' that describes a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A revision may or may not be significant. A significant revision is defined as an ''amendment'' (see above), while a non-significant revision is defined as an ''administrative modification'' (see above).

''State'' would be unchanged.

The definition of ''State implementation plan'' would be retained, with some clarifying revisions.

''Statewide transportation improvement program'' would be unchanged.

''Strategic highway safety plan'' would be defined consistent with 23 U.S.C. 148(b)(6), as amended by the SAFETEA–LU.

''Transportation control measure'' would be defined, as reflected in U.S. EPA's transportation conformity rule at 40 CFR part 93.101.

''Transportation improvement program'' would be revised slightly.

''Transportation management area'' (TMA) would be slightly changed, particularly to change the provision in which the TMA designation formerly applied to the entire metropolitan planning area(s).

''Unified planning work program'' would be defined.

We propose a definition for ''update'' that applies to a complete change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs on a regular schedule as prescribed by Federal statute. Updates always require public review and comment, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (in nonattainment and maintenance areas).

''Urbanized area'' would be defined, consistent with recent statutory changes in 23 U.S.C. 134(b).

We propose to add definitions for the terms ''users of public transportation'' and ''visualization techniques.''

**Subpart B—Statewide Transportation Planning and Programming**

*Section 450.200 Purpose*

The statement of purpose in § 450.200 would be slightly revised to better reflect the policy statement contained in 23 U.S.C. 135 and 49 U.S.C. 5304. The proposed revision would support strengthened linkages between statewide and metropolitan transportation planning, and include a specific reference to ''accessible pedestrian walkways and bicycle facilities.''

*Section 450.202 Applicability*

Existing § 450.202 would be revised to specifically include MPOs and public transportation operators within the statewide transportation planning process and to add 23 U.S.C. 135 and 49 U.S.C. 5304 as a statutory citation.

*Section 450.204 Definitions*

Existing § 450.204 would remain the same, except for the addition of 49 U.S.C. 5302 as a statutory citation.

*Section 450.206 Scope of the Statewide Transportation Planning Process*

For purposes of simplification, a majority of the content of existing § 450.206 would be removed or relocated to other sections due to outdated or redundant information and the section would be re-titled. Proposed § 450.206(a) would revise the content in existing § 450.208(a) by replacing the ISTEA planning factors with the eight planning factors in 23 U.S.C. 135(d)(1) and 49 U.S.C. 5304(d)(1). See ''Key Statutory Changes'' above. The planning factors are based on the language in the statute, with the exception of minor amplification of the factor on ''security.''

In § 450.206(b) we propose to provide general information on the use of and application of the eight planning factors throughout the statewide transportation planning process.

In paragraph (c) what we propose is consistent with the language in 23 U.S.C. 135(d)(2) and 49 U.S.C. 5304(d)(2) that the failure to consider any of the factors shall not be reviewable by any court in any matter affecting a long-range statewide transportation plan, Statewide transportation improvement program (STIP), or FHWA/FTA planning process findings.

In paragraph (d) we propose to re-locate and revise the information and statutory references in existing § 450.218 (Funding). In addition, this proposed paragraph would establish the statewide planning work program required by 23 CFR part 420 (for funds under 23 U.S.C. and 49 U.S.C.) as the primary tool to discuss the planning priorities of the State.

*Section 450.208 Coordination of Planning Process Activities*

Existing § 450.210 would be redesignated as § 450.208. Paragraph (a) would be revised to focus on required planning coordination efforts as defined in 23 U.S.C. 135(b)(1) and 135(e) and 49 U.S.C. 5304(b)(1) and 49 U.S.C. 5304(e) to reflect the simplification of language provided by the change in planning factors.

A new paragraph (b) is proposed to address the 23 U.S.C. 135(b)(2) and 49 U.S.C. 5304(b)(2) requirement for the statewide transportation planning process to be coordinated with air quality planning conducted by State air quality agencies in the development of the transportation portion of the State Implementation Plan (SIP).

A new paragraph (c) is proposed to reflect the 23 U.S.C. 135(c)(1) and 49 U.S.C. 5304(c)(1) provision allowing two or more States to enter into agreements or compacts for cooperative efforts and mutual assistance regarding multi-State transportation planning activities. This paragraph would note that the U.S. Congress reserves the right to alter, amend, or repeal interstate compacts entered into under this part.

Paragraph (d) would retain existing rule language providing States the option to use any one or more of the management systems (in whole or in part) under 23 CFR part 500 for purposes of carrying out the statewide transportation planning process.

Paragraph (e) is proposed to encourage States to apply asset management principles and techniques in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions to include transportation system safety, operations, preservation, and maintenance.

Paragraph (f) is proposed to ensure that statewide transportation planning processes are carried out in a manner consistent with regional Intelligent Transportation System (ITS) architectures in 23 CFR part 940 (based on the ITS consistency requirement in section 5206(e) of the TEA–21).

Paragraph (g) is proposed to address the need for transportation planning processes to be consistent with the development of Public Transit-Human Services Transportation Plans, as defined in 49 U.S.C. 5310, 5316, and 5317.

Paragraph (h) is proposed to promote consistency between the statewide transportation planning process and the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, as well as with the Regional Transit Security Strategy, as required by the Department of Homeland Security.

*Section 450.210 Interested Parties, Public Involvement, and Consultation*

Existing § 450.212 would be revised, re-titled, and redesignated as § 450.210. Overall, existing § 450.212 (Public Involvement) would be broadened to focus on all facets of participation and consultation in the statewide transportation planning process, including the involvement of ''interested parties'' (as defined by 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A)) and State consultation with non-metropolitan local officials, Indian Tribal governments, and the Secretary of the Interior. See ''Key Statutory Changes'' above.

Proposed paragraph (a) would continue the requirement for State public involvement processes that include the ''interested parties'' defined under 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A). Proposed paragraph (a)(1)(ix) provides for periodic State evaluation of its public involvement procedures. The FHWA and the FTA believe that the periodic assessment of such processes, including the voluntary development and use of public involvement process performance criteria, can help to determine that the effort is well spent and help adjust and respond to changes over time.

Proposed paragraph (a)(2) would require States to provide for public comment on existing and proposed procedures for public involvement in the development of the long-range statewide transportation plan and the STIP, allowing at least 45 days for public review and written comment before the procedures and any amendment to existing procedures are adopted.

Proposed paragraph (b) would retain the content in current § 450.212(h) regarding State development of a documented process(es) that is separate and discrete from the State's public involvement process for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials responsible for transportation. In addition, proposed paragraph (b)(1) would retain the content in existing § 450.212(i) on the periodic review (at least once every five years) of the effectiveness of the consultation process(es), including the solicitation of comments (for a period of at least 60 days) from non-metropolitan local officials and other interested parties, and the consideration of these comments by the State in modifying the process(es). Per the existing regulation, the five year review cycle begins February 24, 2006. The existing regulation allowed one year to implement the consultation process after the regulation was published (68 FR 3181, January 23, 2003), established an initial review after two years, and every five years thereafter.

Proposed paragraph (c) focuses on State consultation with Indian Tribal governments and the Secretary of Interior in the development of the long-range statewide transportation plan and the STIP, reflecting the language and intent articulated in 23 U.S.C. 135(f)(2)(C) and 135(g)(2)(C) and 49 U.S.C. 5304(f)(2)( C) and 5304(g)(2)( C). This proposed paragraph also encourages States, as appropriate, to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and Federal land management agencies in the development of the long-range statewide transportation plan and the STIP. The FHWA and the FTA believe that a documented process(es) would provide for greater understanding between States and Indian Tribal governments and Federal land management agencies on how this consultation would occur. The FHWA and the FTA recognize an obligation and requirement for Federal government consultation with Indian Tribes, in addition to State consultation with Tribes.

*Section 450.212 Transportation Planning Studies and Project Development*

Section 1308 of the TEA–21 eliminated the major MIS as a separate requirement and called for the Secretary to integrate, as appropriate, the remaining aspects and features of the MIS (and associated corridor or subarea studies) into the transportation planning and the NEPA regulations.

Since 1998, the FHWA and the FTA (in cooperation with Federal, environmental, resource, and regulatory agencies) have undertaken several initiatives to promote strengthened linkages between the transportation planning and project development/NEPA processes under existing legislative, statutory, and regulatory authorities. In particular, on February 22, 2005, the FHWA and the FTA disseminated legal analysis and program guidance entitled ''Linking the Transportation Planning and NEPA Processes.'' [12] Although voluntary to States, MPOs, and public transportation operators, this program guidance was intended to articulate how information, analysis, and products from metropolitan and statewide transportation planning processes could be incorporated into and relied upon in the NEPA process under existing Federal statutes and regulations.

Proposed § 450.212 is structured around the guiding principles and legal opinion reflected in the program guidance.

*Section 450.214 Development and Content of the Long-range Statewide Transportation Plan*

Existing § 450.214 would be re-titled. Consistent with existing § 450.214, proposed § 450.214 would maintain the opportunity for the long-range statewide transportation plan to be comprised of policies and/or strategies, not necessarily specific projects, over the minimum 20-year forecast period. In addition, proposed paragraph (n) would retain State discretion to identify a periodic schedule for updating the long-range statewide transportation plan and to revise the plan as necessary. The FHWA and the FTA recognize that changes to transportation plans between formal update cycles may be necessary. We have proposed definitions for the terms ''administrative modification,'' ''amendment,'' and ''revision'' to clarify these actions.

[12] This guidance document is available via the Internet at *http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/aa5aec9f63be385c852568cc0055ea16/9fd918150ac2449685256fb10050726c?OpenDocument* and is included as Appendix A.

Proposed § 450.214 also would be revised to reflect key provisions in 23 U.S.C. 135(d)(1)(G) and 135(d)(1)(H) and 49 U.S.C. 5304(d)(1)(G) and 5304(d)(1)(H). Proposed paragraph (b) calls for the long-range statewide transportation plan to include capital, operations, and management strategies, investments, procedures, and other measures to ensure the preservation of the existing transportation system.

The FHWA and the FTA believe improved planning for the operations and management of the Nation's transportation system is vitally important to continuing to deliver the safety, reliability, and mobility for people and freight in the 21st century that the nation expects. Operations and management (or management and operations) is a coordinated approach to optimizing the performance of existing infrastructure and building operational capacity into new projects through the implementation of multimodal, intermodal, and often cross-jurisdictional systems, services, and projects. To be effective, management and operations must be a collaborative effort between transportation planners and managers with responsibility for day-to-day transportation operations. Management and operations refers to a broad range of strategies, such as traffic detection and surveillance, work zone management, emergency management, and traveler information services. It also refers to strategies that address the economically critical area of goods movement, such as improving intermodal connections and designing and operating key elements of the transportation system to accommodate the patterns and dynamics of freight operations. Such strategies enhance reliability and goods movement efficiency; improve public safety and security; support homeland security and safeguard the personal security; reduce traveler delays associated with incidents and other events; and improve information for businesses and for the traveling public.

In order to draw a strong link between the Strategic Highway Safety Planning process described in 23 U.S.C. 148 and the statewide transportation planning process, proposed paragraph (d) states that the long-range statewide transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects contained in the Strategic Highway Safety Plan (SHSP). See ''Key Statutory Changes'' above, on the SHSP requirement.

Proposed paragraph (i) requires that the long-range statewide transportation plan be developed, as appropriate, with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation, including the comparison of transportation plans to State and Tribal inventories or plans/maps of natural and historic resources as mandated in 23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D).

While the title of 23 U.S.C. 135(f)(2)(D) and 49 U.S.C. 5304(f)(2)(D) is ''Consultation, Comparison and Consideration,'' it is important to note that the consultation referenced in the statute is different from the definition of consultation in the existing or proposed regulation. The statute specifically defines ''consultation'' in this section as involving ''comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.''

Proposed paragraph (j) requires that the long-range statewide transportation plan contain a discussion of potential environmental mitigation activities (at the policy and/or strategic-levels, not project-specific). See ''Key Statutory Changes'' above. In developing this discussion in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies, this proposed paragraph allows States to establish reasonable timeframes for performing this consultation.

Proposed paragraph (k) identifies the ''interested parties'' defined in 23 U.S.C. 135(f)(3)(A) and 49 U.S.C. 5304(f)(3)(A) that must be provided a reasonable opportunity to comment on the proposed long-range statewide transportation plan.

Proposed paragraph (l) would implement a provision, added by TEA–21 and retained in 23 U.S.C. 135(f)(5) and 49 U.S.C. 5304(f)(5), for an optional financial plan to be developed to support the long-range statewide transportation plan. Another provision added by the TEA–21, retained by 23 U.S.C. 135(f)(5) and 49 U.S.C. 5304(f)(5), and reflected in proposed paragraphs (l) and (m) states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available.

Also reflecting language in 23 U.S.C. 135(f)(3)(B)(iii) and 49 U.S.C. 5304(f)(3)(B)(iii), proposed paragraph (n) would require the State to publish or otherwise make available the long-range statewide transportation plan in electronically accessible formats and means (such as the World Wide Web). See ''Key Statutory Changes'' above.

*Section 450.216 Development and Content of the Statewide Transportation Improvement Program (STIP)*

Existing § 450.216 would be re-titled. Except for some restructuring and reorganization, much of the content of existing § 450.216 would remain intact.

Substantive changes reflected in proposed § 450.216 reflect key legislative and statutory changes resulting from the TEA–21 and the SAFETEA–LU. Proposed paragraph (a) requires that the STIP cover a period of at least four years and be updated at least every four years. Proposed paragraph (e) would require, pursuant to 23 U.S.C. 204(a) or (j), that Federal Lands Highway program TIPs be included without modification in the STIP (directly or by reference) once approved by the FHWA.

Proposed paragraph (l) would implement a provision, included in the TEA–21 and retained in 23 U.S.C. 135(g)(4)(F) and 49 U.S.C. 5304(g)(4)(F), that a financial plan may be developed to support the STIP. Proposed paragraph (l) would be consistent with the FHWA/FTA Interim Guidance on Fiscal Constraint that was issued on June 30, 2005,[13] and is included in Appendix B. Another provision in paragraph (l) that was prompted by TEA–21 and retained in 23 U.S.C. 135(g)(4)(F) and 49 U.S.C. 5304(g)(4)(F), states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available.

Proposed paragraph (m) also would retain the provision in existing § 450.216(a)(5) that projects included in the first two years of the STIP in nonattainment and maintenance areas shall be limited to those for which funds are available or committed. The FHWA and the FTA believe that retaining this provision is critical to realistic, meaningful planning and public involvement.

The FHWA and the FTA invite comments on whether the agencies should require States submitting STIP amendments to demonstrate that funds are ''available or committed'' for projects identified in the STIP in the year the STIP amendment is submitted and the following year.

Proposed paragraph (o) would allow projects in the first four of years of the STIP to be advanced in place of another project in the first four years of the STIP, subject to the project selection requirements of § 450.220. In addition, proposed paragraph (o) recognizes State discretion to revise the STIP under procedures agreed to by the State, the MPOs and the public transportation operators. The FHWA and the FTA recognize that changes to transportation programs between formal update cycles may be necessary. We have proposed definitions for the terms ''administrative modification,'' ''amendment,'' and ''revision'' to clarify these actions.

*Section 450.218 Self-certification, Federal Findings, and Federal Approvals*

Existing § 450.220 would be re-titled and redesignated as § 450.218. Proposed paragraph (a) would revise existing § 450.220(a) to reflect that the State must submit the entire STIP to the FHWA and the FTA for joint approval, at least once every four years, consistent with the extended cycle established in 23 U.S.C. 135(g)(1) and 49 U.S.C. 5304(g)(1). Furthermore, the State must submit any STIP amendments for joint approval. In addition, proposed paragraphs (a)(1) through (a)(8) would articulate the existing legislative and regulatory authorities to be included in the State self-certification, including three additional Federal requirements ((1) the Older Americans Act; (2) 23 U.S.C. 324 regarding the prohibition of discrimination based on gender; and (3) section 504 of the Rehabilitation Act of 1973 regarding discrimination against individuals with disabilities). These requirements previously existed and the regulations would be revised to include them.

We also are proposing to modify existing § 450.220(b) slightly in proposed paragraph (b) to indicate the relationship of the FHWA/FTA planning finding on the statewide transportation planning process to self-certifications by the State.

Existing § 450.220(d) would be revised and redesignated as a new proposed paragraph (c), indicating that STIP extensions (and by their inclusion, TIP extensions) would be limited to 180 days, with priority consideration to be given to projects and strategies involving the operation and management of the multimodal transportation system.

*Section 450.220 Project Selection From the STIP*

Existing § 450.222 would be re-titled and redesignated as § 450.220 and the references to funding categories updated. This section generally would remain unchanged, except for two key additions.

Proposed paragraph (d) reflects the requirement in 23 U.S.C. 204(a)(5) that Federal Lands Highway program projects be included in an approved STIP.

Proposed paragraph (e) would provide the option for expedited project selection procedures to be used, as agreed to by all parties involved in the project selection process.

The FHWA and the FTA invite comments on whether States should be required to prepare an ''agreed to'' list of projects at the beginning of each of the four years in the STIP, rather than only the first year. The FHWA and the FTA also invite comments on whether a STIP amendment should be required to move a project between years in the STIP, if an ''agreed to'' list is required for each year.

*Section 450.222 Applicability of NEPA to Statewide Transportation Plans and Programs*

This new proposed section re-states the provisions of the TEA–21 and 23 U.S.C. 135(j) and 49 U.S.C. 5304(j) that any decisions by the Secretary regarding the long-range statewide transportation plan and the STIP are not Federal actions subject to the provisions of the NEPA.

*Section 450.224 Phase-In of New Requirements*

Existing § 450.224 would be revised. This proposed section re-states the provisions in 23 U.S.C. 135(j)(B) and 49 U.S.C 5304(p)(B) that State transportation improvement programs adopted on or after July 1, 2007 shall reflect the provisions of 23 U.S.C. 134 and 135 and U.S.C. 5303 and 5304 as amended by the SAFETEA–LU. In addition, this proposed section clarifies that all State and FHWA/FTA actions on transportation plans and programs taken on or after July 1, 2007 (*i.e.*, updates and amendments) are subject to the provisions of 23 U.S.C. 134 and 135 and U.S.C. 5303 and 5304 as amended by SAFETEA–LU and these proposed rules. Provisions for early accommodation of SAFETEA–LU requirements, as well as its revised update cycles also are described in this section.

**Subpart C—Metropolitan Transportation Planning and Programming**

*Section 450.300 Purpose*

Existing § 450.300 would be retained. The statement of purpose would be slightly revised to include a specific reference to ''accessible pedestrian walkways and bicycle facilities,'' as specified in 23 U.S.C. 134(c)(2) and 49 U.S.C. 5303(c)(2).

[13] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

*Section 450.302 Applicability*

Existing § 450.302 would be retained with minor changes to reflect current statutory citations related to metropolitan transportation planning and programming.

*Section 450.304 Definitions*

This section would remain the same, except for the addition of 49 U.S.C. 5302 as a statutory citation.

*Section 450.306 Scope of the Metropolitan Transportation Planning Process*

For purposes of simplification, existing § 450.316(a) would be relocated to § 450.306(a), re-titled and revised by replacing the 16 planning factors from ISTEA with the eight planning factors in 23 U.S.C. 134(h)(1) and 49 U.S.C. 5303(h)(1). See ''Key Statutory Changes'' above. The planning factors are based on the language in the statute, with the exception of minor amplification of the factor on ''security.''

Proposed paragraph (b) provides general information on the use of and application of the eight planning factors throughout the metropolitan transportation planning process.

Proposed paragraph (c) is consistent with language in 23 U.S.C. 134(h)(2) and 49 U.S.C. 5303(h)(2) that the failure to consider any of the factors shall not be reviewable by any court in any matter affecting a metropolitan transportation plan, TIP, or the FHWA/FTA certification of a metropolitan transportation planning process.

Proposed paragraph (d) would require metropolitan transportation planning processes to be coordinated with the statewide transportation planning process as specified in 23 U.S.C. 135(b) and U.S.C. 5304(b).

Paragraph (e) is proposed to encourage MPOs to apply asset management principles and techniques in establishing planning goals, defining TIP priorities, and assessing transportation investment decisions to include system operations, preservation, and maintenance, as well as strategies and policies to support homeland security and to safeguard the personal security of all motorized and non-motorized users. Paragraph (f) is proposed to ensure that metropolitan transportation planning processes are carried out in a consistent manner with regional ITS architectures in 23 CFR part 940 (based on the ITS consistency requirement under section 5206(e) of the TEA–21).

Paragraph (g) is proposed to address the need for transportation planning processes to be consistent with the development of Coordinated Public Transit-Human Services Transportation Plans, as required by 49 U.S.C. 5310, 5316, and 5317 as amended by the SAFETEA–LU.

Paragraph (h) is proposed to promote consistency with the metropolitan transportation planning process and the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and with the Regional Transit Security Strategy, as required by the Department of Homeland Security.

Paragraph (i) would re-locate and slightly revise the information contained in existing § 450.312(f) regarding the designation of urbanized areas over 200,000 population as transportation management areas (TMAs), as specified in 23 U.S.C. 134(k)(1) and 49 U.S.C. 5303(k)(1).

Paragraph (j) would re-locate and slightly revise the information contained in existing § 450.316(c) regarding the opportunity for MPOs serving non-TMAs in attainment of the NAAQS to propose (in cooperation with the State(s) and the public transportation operator(s)) a procedure for developing an abbreviated metropolitan transportation plan and TIP, for approval by the FHWA and the FTA.

*Section 450.308 Funding for Transportation Planning and Unified Planning Work Programs*

Existing § 450.314 would be slightly revised, re-titled, and redesignated as § 450.308. Proposed paragraph (a) discusses the categories of Federal funds that may be used for metropolitan transportation planning.

Proposed paragraph (b) would remove the reference to TMAs contained in existing § 450.314, with the intent of stressing that all MPOs have a responsibility to meet the requirements of this section. However, proposed paragraph (d) would continue the provision in 23 U.S.C. 134(l) and 49 U.S.C. 5303(l) that all MPOs serving non-TMAs may develop a simplified statement of work in lieu of a UPWP.

*Section 450.310 Metropolitan Planning Organization Designation and Redesignation*

Existing § 450.306 would be revised, re-titled, and redesignated as § 450.310. While much of the content of existing § 450.306 would not be significantly changed, a number of new paragraphs are proposed to address issues that have arisen since the enactment of the ISTEA in 1991, including the impacts of the 2000 decennial census.

Proposed paragraph (c) would provide that specific State legislation, State enabling legislation, or interstate compact should be utilized, to the extent possible, for designating MPOs.

Proposed paragraph (d) would mirror the language in 23 U.S.C. 134(d)(2) and 49 U.S.C. 5303(d)(2) outlining the composition of MPOs that serve TMAs.

Proposed paragraph (e) would provide clarifying information regarding multiple MPOs serving a single urbanized area, primarily based on language in 23 U.S.C. 134(d)(6) and 49 U.S.C. 5303(d)(6). Additional language is proposed regarding the development of written agreements between two or more MPOs serving the same urbanized area to clearly identify areas of coordination and the division of responsibilities among the MPOs.

Proposed paragraph (g) would retain existing § 450.306(e) regarding the opportunity for MPOs to utilize the staff of other agencies to carry out selected elements of the metropolitan transportation planning process.

New proposed paragraph (h) clarifies that a designated MPO remains in effect until it has been officially redesignated.

Proposed paragraph (k) would provide clarifying information on what constitutes ''units of general purpose local government.''

Proposed paragraphs (l) and (m) would provide clarifying information on situations that may or may not necessitate MPO redesignations. Since promulgation of the existing rule in 1993, the FHWA and the FTA have addressed a number of issues on this topic. On March 30, 2005, FHWA and FTA issued joint guidance entitled ''FHWA/FTA Guidance on Designation and Redesignation of MPOs'' [14] to address inconsistencies that existed between 23 U.S.C. 134, 49 U.S.C. 5303, and 23 CFR part 450 on the designation and redesignation of MPOs. This joint guidance also provided clarifying information and illustrative examples of scenarios that may or may not trigger MPO redesignations, based on several actual events that transpired since the enactment of the TEA–21. The proposed text is based on this previously-issued guidance.

*Section 450.312 Metropolitan Planning Area Boundaries*

Existing § 450.308 would be re-titled, redesignated as § 450.312 and revised to reflect the TEA–21 and the SAFETEA–LU changes to 23 U.S.C. 134 and 49 U.S.C. 5303.

Proposed paragraph (a) would retain the option in existing § 450.308(a) of

[14] This joint guidance is available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/mpodes.htm.*

extending the metropolitan planning area (MPA) boundary to the limits of the metropolitan statistical area or combined statistical area, as provided in 23 U.S.C. 134(e)(2)(B) and 49 U.S.C. 5303(e)(2)(B).

Proposed paragraph (b) would replace existing § 450.308(a) and includes the option to expand the MPA boundary to encompass the entire area designated as nonattainment for the ozone, carbon monoxide, or particulate matter NAAQS.

Proposed paragraph (c) allows a MPA boundary to encompass more than one urbanized area.

Proposed paragraph (d) states that a MPA boundary may be established to coincide with the geography of regional economic development and growth forecasting areas. This provision is intended to provide impetus for strengthening linkages between metropolitan transportation planning and economic development planning, as articulated in 23 U.S.C. 134(g)(3) and 49 U.S.C. 5303(g)(3).

Proposed paragraph (e) allows new census designated urbanized areas within an existing MPA without requiring redesignation of the existing MPO.

Proposed paragraph (f) addresses situations where the boundaries of an urbanized area or MPA extend across two or more States to encourage coordinated transportation planning in multistate areas.

Proposed paragraph (g) explicitly states that a MPA boundary shall not overlap with another MPA.

Proposed paragraph (h) establishes options for addressing situations in which part of an urbanized area extends into an adjacent MPA. The affected MPOs may either adjust their respective MPA boundaries so that the urbanized area lies only within one MPA or establish written agreements that clearly identify areas of coordination and division of transportation planning responsibilities between the MPOs.

Proposed paragraph (j) provides clarifying information to existing § 450.308(d) on the need for approved MPA boundaries to be provided to the FHWA and the FTA in sufficient detail to be accurately delineated on a map. The FHWA and the FTA would collect this data for informational purposes only to understand national policy issues such as the dynamics related to multiple planning geographies (e.g., MPA boundaries compared to air quality nonattainment and maintenance areas).

*Section 450.314 Metropolitan Planning Agreements*

Existing § 450.310 and § 450.312 would be combined, revised, re-titled, and redesignated as § 450.314.

The content of existing § 450.310(a), (b) and (d) would be combined and largely retained in proposed paragraph (a), except that the reference to ''corridor and subarea studies'' in existing § 450.310(a) would be removed. ''Corridor and subarea studies'' are proposed to be addressed in § 450.318.

Proposed paragraph (a) requires a written agreement(s) by the MPO, State(s), and public transportation operator(s) that clearly identifies their mutual responsibilities in carrying out the metropolitan transportation planning process.

Proposed paragraph (a)(1) would require such an agreement(s) to include specific provisions for the cooperative development and sharing of information related to the financial plans that support the metropolitan transportation plan, the TIP and the annual listing of obligated projects. This proposed paragraph is intended to articulate the cooperative relationships reflected in the TEA–21 and the SAFETEA–LU.

Proposed paragraph (a)(2) would encourage the written agreement(s) to include provisions for consulting with officials responsible for other types of planning affected by transportation (e.g., State and local planned growth, economic development, environmental protection, airport operations, freight movements, non-emergency transportation service providers funded by other sources than title 49, U.S.C., Chapter 53, and safety/security operations). This proposed paragraph is intended to articulate the extensive cooperative relationships reflected in the 23 U.S.C. 134 and 49 U.S.C. 5303.

Proposed paragraph (b) regarding interagency cooperation in MPAs that do not include the entire air quality nonattainment or maintenance areas would retain existing 450.310(f), except for minor wording changes for clarification.

Proposed paragraph (c) would retain existing § 450.310(c), except for minor wording changes for clarification.

Existing § 450.310(d) would be removed since more than one agreement may be necessary to cover the realm of the various cooperative working relationships necessary to undertake comprehensive metropolitan transportation planning.

Existing § 450.310(e) would be removed, since new proposed § 450.308 contains additional information on cooperative working relationships to be documented in the UPWP or simplified statement of work.

Proposed paragraph (d) combines several paragraphs from existing § 450.310 and § 450.312 regarding cooperative agreements among planning agencies when more than one MPO serves a single urbanized area. Proposed paragraph (d) requires coordination of metropolitan transportation plans and TIPs, and strongly encourages coordinated data collection, analysis, and planning assumptions across and between the MPOs, including coordination when transportation improvements extend across the boundaries of more than one MPA. This proposed paragraph also allows multiple MPOs to jointly develop a single, coordinated metropolitan transportation plan and TIP for the entire urbanized area.

Proposed paragraph (e) includes provisions in 23 U.S.C. 134(f) and 49 U.S.C. 5303(f) for situations in which the boundaries of the urbanized area or MPA extend across two or more States.

Proposed paragraph (f) would specifically allow for part of an urbanized area designated as a TMA to overlap into an adjacent MPA serving a non-TMA urbanized area without requiring the entire adjacent urbanized area also to be designated as a TMA. While MPA boundaries may not overlap, more than one MPO may serve a single MPA. Proposed paragraph (f) would require TMAs to establish formal agreements that clearly define specific MPO responsibilities within the urbanized area. This proposed change acknowledges the geographical boundary complexities that arose with the 2000 census.[15] If the affected MPOs choose to pursue this option, proposed paragraph (f) would require the development of a written agreement between the MPOs, the State(s), and the public transportation operator(s) describing how specific TMA requirements (*e.g.*, congestion management process, surface transportation program funds suballocated to the urbanized area over 200,000 population, and project selection) will be met for the overlapping part of the urbanized area.

Existing § 450.312(i) has been retained, expanded, and relocated to proposed § 450.316(c) discussed below.

[15] For the 2000 decennial Census, the Bureau of the Census used a new procedure for defining urbanized areas, based strictly on the population density of census blocks and block groups. This resulted in most urbanized areas having very irregular shaped boundaries, with a large number of these urbanized areas extending across traditional jurisdictional boundaries (*e.g.*, counties and townships), which are often used to define the metropolitan planning area boundaries.

*Section 450.316 Interested Parties, Participation, and Consultation*

Existing § 450.316(b) would be revised, expanded, re-titled, and redesignated as § 450.316. Since the enactment of the ISTEA in 1991, MPOs have been required to develop and utilize a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing metropolitan transportation plans and TIPs. Title 23 U.S.C. 134(i)(5) and 49 U.S.C. 5303(i)(5) as amended by the SAFETEA–LU expanded the public involvement provisions by requiring MPOs to develop and utilize ''participation plans'' that are developed in consultation with an expanded list of ''interested parties'' identified in 23 U.S.C. 134(i)(5)(A) and 49 U.S.C. 5303(i)(5)(A). See ''Key Statutory Changes'' above.

Proposed paragraph (a) would describe the requirement in 23 U.S.C. 134(i)(5)(B) and 49 U.S.C. 5303(i)(5)(B) as amended by the SAFETEA–LU for developing and using a documented Participation Plan and would retain much of the content from existing § 450.316(b), with additional language provided to directly address the requirement in 23 U.S.C. 134(i)(5)(A) and 49 U.S.C. 5303 for extensive stakeholder ''participation'' that is above and beyond ''public involvement.'' Specifically, proposed paragraph (a) would re-state the requirements in 23 U.S.C. 134(i)(5)(C) and 49 U.S.C. 5303(i)(5)(C) for the MPO to hold any public meetings at convenient and accessible locations and times, employ visualization techniques to describe metropolitan transportation plans and TIPs, and make public information available in electronically accessible format and means (such as the World Wide Web).

The FHWA and the FTA recognize that there are myriad ways to use visualization techniques to better convey plans and programs and there are wide variations among MPO capabilities and needs, especially between large, established MPOs and small, new MPOs. States and MPOs may use everything from static maps to interactive GIS systems, from artist renderings and physical models to photo manipulation to computer simulation. Visualization can be used to support plans, individual projects or Scenario Planning, where various future scenarios are depicted to allow stakeholders to develop a shared vision for the future by analyzing various forces (*e.g.*, health, transportation, economic, environment, land use, etc.) that affect growth.

While the FHWA and the FTA will encourage States and MPOs to identify and implement the most appropriate visualization technique for their particular circumstances, we do not propose to specify when specific techniques must be used. As technology continues to change and visualization techniques evolve, we anticipate that the techniques will be varied as they appropriately illustrate the project or plans they are trying to explain.

The FHWA and the FTA will provide technical assistance and information to States and MPOs on how to deploy different visualization techniques and will share noteworthy practices to highlight innovations that provide the public, elected and appointed officials and other stakeholders with better opportunities to understand the various options proposed for plans and programs. The FHWA and the FTA will share this information through the Transportation Planning Capacity Building Program, Web sites and publications.

Title 23 U.S.C. 134(i)(5)(B) and 49 U.S.C. 5303(i)(5)(B), as amended by SAFETEA–LU, require development of a participation plan. The FHWA and the FTA propose that the participation plan include elements of the public involvement process currently required of MPOs, as well as new requirements mandated by SAFETEA–LU. Proposed paragraph (a) identifies the interested parties to be included in the metropolitan transportation planning process, largely retains the language in existing § 450.316(b) regarding the public involvement process and builds on that process to describe the requirements of the new participation plan.

Proposed paragraph (a)(1)(vi) largely retains the language in existing § 450.316(b)(1)(v) that would require the participation plan to demonstrate explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP.

Proposed paragraph (a)(1)(vii) largely retains the language in existing § 450.316(b)(1)(vi) that would require the participation plan to seek out and consider the needs of those traditionally underserved by existing transportation systems, including low-income and minority households.

Proposed paragraph (a)(1)(viii) largely retains the language in existing § 405.316(b)(1)(viii) that would require the participation plan to provide an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was initially made available for public comment.

Proposed paragraph (a)(1)(ix) largely retains the language in existing § 450.316 (b)(1)(xi) that the participation plan be coordinated with the statewide transportation planning public involvement and consultation processes.

Proposed paragraph (a)(1)(x) largely retains the language in existing § 450.316(b)(1)(ix) requiring MPOs to periodically review the participation plan's effectiveness to ensure a full and open participation process.

Proposed paragraph (a)(2) largely retains the language in existing § 450.316(b)(1)(vii) regarding the MPO's disposition of comments received on the draft metropolitan transportation plan or TIP as part of the final metropolitan transportation plan or TIP.

Proposed paragraph (a)(3) would retain the language in existing § 450.316(b)(1)(i) requiring a minimum public comment period of 45 calendar days be provided before the initial or revised participation plan is adopted by the MPO.

Proposed paragraph (b) reiterates the language in 23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4) that requires MPOs to consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation in the development of metropolitan transportation plans and TIPs. See ''Key Statutory Changes'' above.

Proposed paragraphs (c) and (d) expand upon existing § 450.312(i) regarding MPO consultation with Indian Tribal governments or Federal land management agencies in the development of metropolitan plans and TIPs when the MPA includes Indian Tribal lands or Federal public lands. See ''Key Statutory Changes'' above.

Proposed paragraph (e) encourages MPOs to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in proposed paragraphs (b), (c) and (d). Such procedures may be included in the agreement(s) developed under proposed § 450.314. This proposed paragraph is intended to communicate the importance for MPOs to consult with a diverse array of State, local, and Indian Tribal governments and agencies in carrying out comprehensive metropolitan transportation planning.

*Section 450.318 Transportation Planning Studies and Project Development*

Existing § 450.318 would be revised and re-titled. Section 1308 of the TEA–21 eliminated the major investment study (MIS) as a separate requirement and required the Secretary to integrate, as appropriate, the remaining aspects and features of the MIS (and associated corridor or subarea studies) into the transportation planning and NEPA regulations (23 CFR part 771).

Since 1998, the FHWA and the FTA (in cooperation with Federal, environmental, resource, and regulatory agencies) have undertaken several initiatives to promote strengthened linkages between the transportation planning and project development/NEPA processes under existing legislative, statutory, and regulatory authorities. In particular, on February 22, 2005, the FHWA and the FTA disseminated legal analysis and program guidance entitled ''Linking the Transportation Planning and NEPA Processes''.[16] Although voluntary to States, MPOs, and public transportation operators, this program guidance was intended to articulate how information, analysis, and products from metropolitan and statewide transportation planning processes could be incorporated into and relied upon in the NEPA process under existing Federal statutes and regulations. Proposed § 450.318 is structured around the guiding principles and legal opinion reflected in that document.

*Section 450.320 Congestion Management Process in Transportation Management Areas*

Existing § 450.320 would be retained as § 450.320, and revised and re-titled to reflect the requirement in 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3) that TMAs develop and use a congestion management process. See ''Key Statutory Changes'' above.

The SAFETEA–LU amended 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3) to require that the planning process in a TMA include a congestion management ''process'' instead of a ''system''. This section is based on most of the information on ''congestion management systems'' contained in 23 CFR part 500. Therefore, this proposed rulemaking transfers the TMA congestion management ''system'' requirements in 23 CFR 500.109 to this subpart. The intent is to reiterate the importance of the congestion management process to TMA transportation planning and programming and consolidate this TMA requirement with the rest of the requirements for TMA planning processes.

In the past the CMS requirement, perhaps because it was a separate regulation, has often been carried out in a stove-piped manner, separate from the typical MPO planning process and separate from transportation system operational and management strategies. The proposed regulations reflect the goal that CMP be an integral part of developing a long range transportation plan and TIP for TMA MPOs. The proposed regulation also reflects the FHWA and the FTA goal to have a common set of performance measures and a common set of goals and objectives among the CMP, the long range transportation plan and the transportation systems operational and management strategies for a region. Items such as the regional ITS architecture and the selection process for projects to be included in the TIP should be consistent and seamless with the CMP. As part of developing the CMP, planners should be working in collaboration with others in the region, including public transportation operators and State and local operations staff.

Proposed paragraph (a) re-states the language in 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303(k)(3) requiring the development and implementation of a congestion management process in TMAs.

Proposed paragraph (b) largely retains the definition of a CMS contained in existing 23 CFR 500.109(a)

Proposed paragraphs (c)(1) through (c)(6) retain the specific TMA congestion management language from existing 23 CFR 500.109(b)(1) through (b)(6).

Proposed paragraph (d) reflects the language in 23 U.S.C. 134(m)(1) and 49 U.S.C. 5303(m)(1) regarding the use of the congestion management process in TMAs designated as nonattainment for ozone or carbon monoxide. Paragraph (d) would require that any project that would result in a significant increase in the carrying capacity for single occupant vehicles (SOVs) be addressed through a congestion management process.

Proposed paragraph (e) largely retains the language in the latter portion of 23 CFR 500.109(c) requiring analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that would result in a significant increase in SOV capacity is proposed in nonattainment and maintenance area TMAs.

Proposed paragraph (f) reflects the language in 23 U.S.C. 135(i) and 49 U.S.C. 5304(i) allowing State laws, rules, or regulations pertaining to congestion management systems or processes to constitute the congestion management process.

The phase-in period defined in 23 CFR 500.109(d)(2) would be removed from this proposed section since that date has passed.

*Section 450.322 Development and Content of the Metropolitan Transportation Plan*

Existing § 450.316 would be revised, re-titled, and redesignated as § 450.322, largely to reflect statutory requirements from the TEA–21 and the SAFETEA–LU.

Proposed paragraph (a) retains the language under existing § 450.316 that the metropolitan transportation plan must address at least a 20-year planning horizon. Additional clarifying information would specify that the minimum 20-year horizon applies at the time the metropolitan transportation plan is approved by the MPO. Proposed paragraph (a) would clarify that the effective date of the metropolitan transportation plan in nonattainment and maintenance areas is the date of a conformity determination issued by the FHWA and the FTA. This proposed change is intended to eliminate confusion over the validity of the metropolitan transportation plan in relation to the timing of the MPO and the FHWA/FTA conformity determinations, as well as provide a consistent temporal basis to track the new four-year update cycle established by the SAFETEA–LU.

Proposed paragraph (c) reflects the provision in 23 U.S.C. 134(i)(1) and 49 U.S.C. 5303(i)(1) that metropolitan transportation plans in air quality nonattainment and maintenance areas be updated at least every four years, instead of the former three-year update cycle. For attainment area MPOs, proposed paragraph (c) would maintain the previous 5-year update cycle. See ''Key Statutory Changes'' above. In addition, proposed paragraph (c) would provide MPO discretion to revise the plan as necessary. The FHWA and the FTA recognize that changes to transportation plans between formal update cycles may be necessary. We have proposed definitions for the terms ''administrative modification,''

[16] This guidance document is available via the Internet at the following URL: *http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/aa5aec9f63be385c852568cc0055ea16/9fd918150ac2449685256fb10050726c?OpenDocument.*

''amendment,'' and ''revision'' to clarify these actions.

Proposed paragraph (d) addresses the State air quality agency coordination of the development of the TCMs in a SIP. This proposed paragraph also discusses the ''TCM substitution'' provisions in Section 6011(d) of the SAFETEA–LU.

Proposed paragraph (f)(2) notes that the locally preferred alternative selected from a planning Alternatives Analysis under the FTA's Capital Investment Grant program (49 U.S.C. 5309 and 49 CFR part 611) need to be adopted by the MPO as part of the metropolitan transportation plan as a condition for funding under 49 U.S.C. 5309.

As specified in 23 U.S.C. 134(i)(2)(D) and 49 U.S.C. 5303(i)(2)(D), proposed paragraph (f)(3) would require the metropolitan transportation plan include operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods. See ''Key Statutory Changes'' above.

The FHWA and the FTA believe improved planning for the operations and management of the Nation's transportation system is vitally important to achieving the high expectations for safety, reliability, and mobility for people and freight in the 21st century. Operations and management (or management and operations) is a coordinated approach to optimizing the performance of existing infrastructure through implementation of multimodal, intermodal, and often cross-jurisdictional systems, services, and projects. To be effective, management and operations must be viewed as a collaborative effort between transportation planners and managers with responsibility for day-to-day transportation operations. Management and operations refers to a broad range of strategies. Examples include traffic detection and surveillance, work zone management, emergency management, freight management systems, and traveler information services. Such strategies enhance reliability and service efficiency; improve public safety and security; reduce traveler delays associated with incidents and other events; and improve information for businesses and for the traveling public.

Proposed paragraph (f)(7) would require, consistent with 23 U.S.C. 134(i)(2)(B) and 49 U.S.C. 5303(i)(2)(B), that the metropolitan transportation plan contain a discussion of potential environmental mitigation activities (at the policy- and/or strategic-levels, not project-specific), developed in consultation with Federal, State, and Tribal regulatory agencies responsible for land management, wildlife, and other environmental issues. In addition, this proposed paragraph allows MPOs to establish reasonable timeframes for performing this consultation. See ''Key Statutory Changes'' above.

Proposed paragraph (f)(10) would implement the provision, in 23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C), for a financial plan to be developed to support the metropolitan transportation plan. In addition, proposed paragraph (f)(9), states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available as allowed by 23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C). Appendix B to this proposed rule contains a revised version of the FHWA/FTA Guidance on Fiscal Constraint of Transportation Plans and Programs, which is based on interim guidance issued by the FHWA and the FTA.[17]

Proposed paragraph (g) would require that the metropolitan transportation plan be developed, as appropriate, in consultation with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation, including the comparison of transportation plans to State and Indian Tribal inventories or plans/maps of natural and historic resources, as specified in 23 U.S.C. 134(i)(2)(B)(ii) and 49 U.S.C. 5303(i)(2)(B)(ii). See ''Key Statutory Changes'' above.

While the title of 23 U.S.C. 134(i)(4) and 49 U.S.C. 5303(i)(4) is ''Consultation'', it is important to note that the consultation referenced in proposed paragraph (g) is different from the definition of consultation in the existing or proposed regulation. The statute specifically defines ''consultation'' in this section as involving, as appropriate, ''comparison of transportation plans with State conservation plans or maps, if available, or comparison of transportation plans to inventories of natural or historic resources, if available.''

In order to draw a strong link between the Strategic Highway Safety Planning process described in 23 U.S.C. 148 and the metropolitan transportation planning process, proposed paragraph (h) states that the metropolitan transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects for the MPA contained in the Strategic Highway Safety Plan. This proposed paragraph also seeks to promote consistency between the development of metropolitan transportation plans and emergency relief/disaster preparedness plans, as well as strategies and policies that support homeland security and safeguard the personal security of all motorized and non-motorized users (as appropriate).

Proposed paragraph (i) would provide opportunities to comment for the ''interested parties'', specified in 23 U.S.C. 134(i)(5) and 49 U.S.C. 5303(i)(5) in the development of the metropolitan transportation plan, using the participation plan developed under proposed § 450.316.

Proposed paragraph (j) would require the MPO to publish or otherwise make available the metropolitan transportation plan in electronically accessible formats and means (such as the World Wide Web), to the maximum extent practicable as specified in 23 U.S.C. 134(i)(5)(C) and 49 U.S.C. 5303(i)(5)(C). See ''Key Statutory Changes'' above.

The FHWA and the FTA recognize that there are myriad ways to use visualization techniques to better convey plans and programs. States and MPOs may use everything from static maps to interactive GIS systems, from artist renderings and physical models to photo manipulation to computer simulation. Visualization can be used to support plans, individual projects or Scenario Planning, where various future scenarios are depicted to allow stakeholders to develop a shared vision for the future by analyzing various forces (*e.g.*, health, transportation, economic, environmental, land use, etc.) that affect growth. While the FHWA and the FTA will encourage States and MPOs to identify and implement the most appropriate visualization technique for their particular circumstances, we do not propose to specify when specific techniques must be used. There is too much variation among MPOs and their circumstances to mandate specific visualization techniques. As technology continues to change and visualization techniques evolve, we anticipate that the techniques will be varied as they appropriately illustrate the projects and plans MPOs are trying to explain.

The FHWA and the FTA will provide technical assistance and information to States and MPOs on how to deploy different visualization techniques and will share noteworthy practices to highlight innovations that provide the

[17] FHWA/FTA Guidance on Fiscal Constraint of Transportation Plans and Programs, June 30, 2005, available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/fcindex.htm.*

public, elected and appointed officials and other stakeholders with better opportunities to understand the various options proposed for plans and programs. This information will be shared through the Transportation Planning Capacity Building Program, our Web sites and publications.

Proposed paragraph (l) would be added to authorize utilization of an interim transportation plan during a conformity lapse, with the intent to continue funding of exempt projects, transportation control measures (TCMs) in an approved State Implementation Plan, and other projects that can advance under a conformity lapse in accordance with 40 CFR part 93. Under the provisions of § 176(c) of the Clean Air Act, as amended by the SAFETEA–LU, nonattainment and maintenance areas have 12 months from the time the area misses a deadline to determine conformity of their transportation plan or TIP before a conformity lapse occurs. During this conformity lapse grace period, all planning requirements in this subpart and subpart B must still be met.

*Section 450.324 Development and Content of the Transportation Improvement Program (TIP)*

Existing § 450.324 would be revised and retained as § 450.324. Except for some restructuring and reorganization, much of the content of existing § 450.324 would remain intact.

Substantive changes reflected in proposed § 450.324 are consistent with key legislative and statutory changes resulting from the TEA–21 and the SAFETEA–LU. Proposed paragraph (a) requires that the TIP cover a period of at least four years and be updated at least every four years. See ''Key Statutory Changes'' above.

Proposed paragraph (d) would modify existing § 450.324(f)(4) and (f)(5) to clarify that all regionally significant projects, whether federally funded or otherwise, would be included in the metropolitan TIP for purposes of transportation conformity, fiscal constraint, and public disclosure.

Proposed paragraph (h) would implement a provision, retained in 23 U.S.C. 134(j)(2)(B) and 49 U.S.C. 5303(j)(2)(B), requiring a financial plan to be developed to support the TIP. Another provision added by TEA–21, retained in 23 U.S.C. 134(j)(2)(B) and 49 U.S.C. 5303(j)(2)(B), and also reflected in proposed paragraph (h), states that the financial plan may include informational ''illustrative projects'' reflecting additional projects that would be included if other revenue sources were to become available.

Proposed paragraph (i) would retain provisions in existing § 450.324(e) that explains the fiscal constraint standard for TIPs. The FHWA and the FTA believe that retaining these provisions are extremely important to meaningful planning and public involvement to ensure that TIPs are not merely ''wish lists.''

The FHWA and the FTA invite comments on whether the agencies should require MPOs submitting TIP amendments to demonstrate that funds are ''available or committed'' for projects identified in the TIP in the year the TIP amendment is submitted and the following year.

Proposed paragraph (k) would be added to authorize utilization of an interim TIP during a conformity lapse, with the intent to continue funding exempt projects, transportation control measures (TCMs) in an approved State Implementation Plan, and other projects that can advance under a conformity lapse in accordance with 40 CFR part 93. Under the provisions of § 176(c) of the Clean Air Act, as amended by the SAFETEA–LU, nonattainment and maintenance areas have 12 months from the time the area misses a deadline to determine conformity of their transportation plan or TIP before a conformity lapse occurs. During this conformity lapse grace period, all planning requirements in this subpart and subpart B must still be met.

*Section 450.326 TIP Revisions and Relationship to the STIP*

Existing § 450.326 and § 450.328 would be combined, re-titled, and redesignated as § 450.326. The existing regulatory text would remain largely unchanged. It allows for revision of TIPs through the addition or deletion of projects, subject to conditions that protect the principles of fiscal constraint and public involvement. The FHWA and the FTA recognize that changes to TIPs between formal update cycles may be necessary. This proposed section intends to clarify that in nonattainment and maintenance areas, a new conformity determination is necessary unless the changes to TIPs are administrative modifications (*i.e.*, addition or deletion of exempt projects). Consistent with this, proposed paragraph (a) would clarify that a new conformity determination is necessary when regionally significant non-exempt projects are added to or deleted from a TIP. Similarly, moving a project or a phase of a project from year five or later of a TIP to the first four years would constitute an amendment that would require a new conformity determination. And, in all areas, changes that affect fiscal constraint must take place by amendment of the TIP. We have proposed definitions for the terms ''administrative modification,'' ''amendment,'' and ''revision'' to clarify these actions.

*Section 450.328 TIP Action by the FHWA and the FTA*

Existing § 450.330 would be redesignated as § 450.328. The existing regulatory text would be changed slightly for clarification or technical corrections.

A new paragraph (c) would address situations in which a metropolitan transportation plan is not updated within the cycles required in the SAFETEA–LU, and proposes limitations on projects that could be advanced from an existing TIP. In nonattainment and maintenance areas, § 176(c) of the Clean Air Act, as amended by the SAFETEA–LU, provides a 12-month conformity lapse grace period from the time conformity expires on a plan or TIP before an area enters a conformity lapse. During the conformity lapse grace period, all planning requirements defined in 450.322 and 450.324 must still be met. As long as the TIP is still valid, projects can continue to be advanced, but amendments to the TIP would require a new conformity determination.

A new paragraph (e) would be added to address the addition of ''illustrative projects'' to TIPs. This proposed paragraph makes it clear that no Federal action may be taken on these projects until they become formally included in the TIP, as specified in statute.

*Section 450.330 Project Selection From the TIP*

Existing § 450.332 would be revised, re-titled, and redesignated as § 450.330. Existing § 450.332(a), (b), and (c) would be redesignated as § 450.330(b), (c) and (a), respectively, with largely citation corrections made to the text. In addition, proposed paragraph (a) has been revised to reflect the requirement in 23 U.S.C. 134(j)(2)(A) and 49 U.S.C. 5303(j)(2)(A) that the TIP include projects covering four years. See ''Key Statutory Changes'' above.

With minor citation changes, existing § 450.332(d) and (e) would be redesignated in proposed § 450.330 paragraphs (d) and (e), respectively.

The FHWA and the FTA invite comments on whether MPOs should be required to prepare an ''agreed to'' list of projects at the beginning of each of the four years in the TIP, rather than only the first year. The FHWA and the FTA also invite comments on whether a TIP amendment should be required to

move a project between years in the TIP, if an ''agreed to'' list is required for each year.

*Section 450.332 Annual Listing of Obligated Projects*

This new proposed section addresses the requirements of the TEA–21 and 23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B) for the development of an annual listing of projects (including investments in pedestrian walkways and bicycle facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year in MPAs.

Proposed paragraph (a) re-states the language in 23 U.S.C. 134(j)(7)(B) and 49 U.S.C. 5303(j)(7)(B) that the annual listing shall be cooperatively developed by the State(s), public transportation operator(s), and the MPO, in accordance with § 450.314(a) and specifies the timetable for publication of the annual listing.

Proposed paragraph (b) specifies that the information contained in the annual listing of obligated projects be consistent with the information contained in the TIP and specifies the information to be included.

Proposed paragraph (c) states that the annual listing of obligated projects shall be published or otherwise made available by the MPO in accordance with the participation plan's criteria related to the TIP.

*Section 450.334 Self-Certifications and Federal Certifications*

Existing § 450.334 would be revised, re-titled, and retained as § 450.334. Proposed paragraph (a) would revise existing § 450.334(a) to align the transmittals of the State/MPO self-certifications and the TIP to the FHWA and the FTA, thereby reflecting the language in 23 U.S.C. 134(j)(1)(D) and 49 U.S.C. 5303(j)(1)(D) that requires TIPs to be updated at least once every four years. In addition, proposed paragraphs (a)(1) through (a)(8) would articulate the existing legislative and regulatory authorities to be included in the State/MPO self-certification, including three additional Federal requirements (1) the Older Americans Act, (2) 23 U.S.C. 324 regarding the prohibition of discrimination based on gender, and (3) section 504 of the Rehabilitation Act of 1973 regarding discrimination against individuals with disabilities). These requirements previously existed and the regulations would be revised to include them.

Proposed paragraph (b) would combine and revise the content of existing § 450.334(b) through (h), based largely on language in 23 U.S.C. 134(k)(5) and 49 U.S.C. 5303(k)(5) that describes TMA certification. In addition, proposed paragraphs (b)(1)(i) through (b)(1)(iii) describe specific FHWA/FTA options on TMA certification.

*Section 450.336 Applicability of NEPA to Metropolitan Transportation Plans and Programs*

This new proposed section includes the provisions of the TEA–21 and 23 U.S.C. 134(p) and 49 U.S.C. 5303(p) that any decisions by the FHWA and the FTA regarding the metropolitan transportation plan and the TIP are not Federal actions subject to the provisions of NEPA.

*Section 450.338 Phase-in of New Requirements*

Existing § 450.336 would be revised and redesignated as § 450.338. Proposed paragraphs (a), (b) and (c) include the requirements in Sections 3005(b) and 6001(b) of the SAFETEA–LU that State and MPO transportation plans and programs adopted on or after July 1, 2007, shall reflect the provisions in 23 U.S.C. 134 and 49 U.S.C. 5303 as amended by the SAFETEA–LU. In addition, this proposed section clarifies that all State, MPO, and FHWA/FTA actions on metropolitan transportation plans and programs taken on or after July 1, 2007 (*i.e.*, updates and amendments) are subject to the provisions in 23 U.S.C. 134 and 49 U.S.C. 5303 as amended by the SAFETEA–LU and these proposed rules. Provisions for early accommodation of SAFETEA–LU requirements, as well as its revised update cycles are described in this section.

Proposed paragraph (d) would establish that the congestion management process for newly designated TMAs shall be implemented within 18 months of the designation of the TMA. This requirement is consistent with previous joint guidance provided by the FHWA and the FTA entitled ''Frequently Asked Questions on Applying 2000 Census Data to Urbanized and Urban Areas''.[18]

**Appendix A—Linking the Transportation Planning and NEPA Processes**

The agencies propose to include an Appendix A in the regulations discussing the mandated linkage between transportation planning and project development to amplify requirements in 23 U.S.C. 134 and 135 and in 49 U.S.C. 5303 and 5304 regarding this linkage.

Despite the statutory emphasis over the last 40 years directing that Federally funded highway and transit projects flow from metropolitan and statewide transportation planning processes, the environmental analyses produced to meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*) have often been disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), planning-level corridor/subarea/feasibility studies, or FTA's planning Alternatives Analyses. Congress established a strong transportation planning process for a reason, so that it would lay a foundation and help shape project decisions. This Appendix reinforces how planning analyses and decisions should be relied on during the NEPA process. The Appendix presents environmental review as a continuum of sequential study, refinement, and expansion performed in transportation planning and during project development/NEPA, with information developed and conclusions drawn in early stages utilized in subsequent (and more detailed) review stages. The Appendix includes a ''Questions and Answers'' section that addresses common issues regarding linking the transportation planning and NEPA/project development processes.

**Appendix B—Fiscal Constraint of Transportation Plans and Programs**

The agencies propose to include Appendix B on fiscal constraint to amplify requirements in 23 U.S.C. 134 and 135 and in 49 U.S.C 5303 and 5304 associated with fiscal constraint. Appendix B summarizes and describes in detail the ISTEA and TEA–21 fiscal constraint requirements to ensure that transportation plans and programs reflect realistic assumptions on capital, operations, and maintenance costs associated with the surface transportation system. Appendix B explains how to estimate ''reasonably available'' future revenues and what is considered ''Available or Committed'' funds. The Appendix also describes how to address changes in revenues or costs after the metropolitan transportation plan, TIP, or STIP are adopted and the FHWA/FTA position on how operations or maintenance are to be covered by fiscal constraint analyses. The Appendix includes a ''Questions and Answers'' section that addresses common uncertainties

[18] Guidance issued on March 31, 2003, available via the Internet at the following URL: *http://www.fhwa.dot.gov/planning/census/faqa2cdt.htm.*

regarding different fiscal constraint situations.

*Section 500.109 Congestion Management Systems (CMS)*

The SAFETEA–LU amended 23 U.S.C. 134(k)(3) and 49 U.S.C. 5303 to require that the planning process in a TMA include a congestion management ''process'' instead of a ''system''. This proposed rulemaking transfers the TMA congestion management ''system'' requirements from this section to § 450.320. The intent of moving the requirements from this section to § 450.320 is to reiterate the importance of the congestion management process to TMA transportation planning and programming and consolidate the TMA congestion management process requirement with the rest of the requirements for TMA planning processes.

Proposed paragraph (a) largely retains the language contained in existing § 500.109(a). The remaining portions of existing § 500.109 that pertain to congestion management in TMAs are proposed to be moved to § 450.320.

The phase-in period defined in existing § 500.109(d)(2) would be removed because it is no longer necessary.

**49 CFR Part 613**

This section would be revised to refer to the proposed regulations in 23 CFR part 450. Because the FHWA and the FTA jointly administer the transportation planning and programming process, we propose to keep the regulations identical.

**Distribution Tables**

For ease of reference, two distribution tables are provided. The first indicates proposed changes in section numbering and titles. The second provides details within each section.

SECTION TITLE AND NUMBER

| Old section | New section |
|---|---|
| *Subpart A* | *Subpart A* |
| 450.100 Purpose | 450.100 Purpose. |
| 450.102 Applicability | 450.102 Applicability. |
| 450.104 Definitions | 450.104 Definitions. |
| *Subpart B* | *Subpart B* |
| 450.200 Purpose | 450.200 Purpose. |
| 450.202 Applicability | 450.202 Applicability. |
| 450.204 Definitions | 450.204 Definitions. |
| 450.206 Statewide transportation planning process: General requirements. | 450.206 Scope of the statewide transportation planning process. |
| 450.208 Statewide transportation planning process: Factors | 450.208 Coordination of planning process activities. |
| 450.210 Coordination | 450.210 Interested parties, public involvement, and consultation. |
| | 450.212 Transportation planning studies and project development. |
| 450.212 Public involvement | 450.214 Development and content of the long-range statewide transportation plan. |
| 450.214 Statewide transportation plan | 450.216 Development and content of the statewide transportation improvement program (STIP). |
| 450.216 Statewide transportation improvement program (STIP) | 450.218 Self-certifications, Federal findings, and Federal approvals. |
| 450.218 Funding | 450.220 Project selection from the STIP. |
| 450.220 Approvals | 450.222 Applicability of NEPA to statewide transportation plans and programs. |
| 450.222 Project selection for implementation | 450.224 Phase-in of new requirements. |
| *Subpart C* | *Subpart C* |
| 450.300 Purpose | 450.300 Purpose. |
| 450.302 Applicability | 450.302 Applicability. |
| 450.304 Definitions | 450.304 Definitions. |
| 450.306 Metropolitan planning organizations: Designation and redesignation. | 450.306 Scope of the metropolitan transportation planning process. |
| 450.308 Metropolitan planning organization: Metropolitan planning boundary. | 450.308 Funding for transportation planning and unified planning work programs. |
| 450.310 Metropolitan planning organization: planning agreements | 450.310 Metropolitan planning organization designation and redesignation. |
| 450.312 Metropolitan transportation planning: Responsibilities, cooperation, and coordination. | 450.312 Metropolitan planning area boundaries. |
| 450.314 Metropolitan transportation planning process: Unified planning work programs. | 450.314 Metropolitan planning agreements. |
| 450.316 Metropolitan transportation planning process: Elements | 450.316 Interested parties, participation and consultation. |
| 450.318 Metropolitan transportation planning process: Major metropolitan transportation investments. | 450.318 Transportation planning studies and project development. |
| 450.320 Metropolitan transportation planning process: Relation to management systems. | 450.320 Congestion management process in transportation management areas. |
| 450.322 Metropolitan transportation planning process: Transportation plan. | 450.322 Development and content of the metropolitan transportation plan. |
| 450.324 Transportation improvement program: General | 450.324 Development and content of the transportation improvement program (TIP). |
| 450.326 Transportation improvement program: modification | 450.326 TIP revisions and relationship to the STIP. |
| 450.328 Transportation improvement program: Relationship to statewide TIP. | 450.328 TIP action by the FHWA and the FTA. |
| 450.330 Transportation improvement program: Action required by FHWA/FTA. | 450.330 Project selection from the TIP. |
| 450.332 Project selection for implementation | 450.332 Annual listing of obligated projects. |
| 450.334 Metropolitan transportation planning process: Certification | 450.334 Self-certifications and Federal certifications. |

SECTION TITLE AND NUMBER—Continued

| Old section | New section |
|---|---|
| 450.336 Phase-in of new requirements | 450.336 Applicability of NEPA to metropolitan transportation plans and programs. |
| None | 450.338 Phase-in of new requirements. |
| *Section 500* | |
| 500.109 CMS | 500.109 CMS. |

The following distribution table identifies details for each existing section and proposed section:

| Old section | New section |
|---|---|
| *Subpart A* | *Subpart A* |
| 450.100 | 450.100. [Revised]. |
| 450.102 | 450.102. |
| 450.104 | 450.104. |
| Definitions | Definitions. |
| None | Administrative modification. [New]. |
| None | Alternatives analysis. [New]. |
| None | Amendment. [New]. |
| None | Attainment area. [New]. |
| None | Available funds. [New]. |
| None | Committed funds. [New]. |
| None | Conformity. [New]. |
| None | Conformity lapse. [New]. |
| None | Congestion management process. [New]. |
| None | Consideration. [New]. |
| Consultation | Consultation. [Revised]. |
| Cooperation | Cooperation. [Revised]. |
| None | Coordinated public transit-human services transportation plan. [New]. |
| Coordination | Coordination. [Revised]. |
| None | Design concept. [New]. |
| None | Design scope. [New]. |
| None | Environmental mitigation activities. [New]. |
| None | Federal land management agency. [New]. |
| None | Federally funded non-emergency transportation services. [New]. |
| None | Financially constrained or Fiscal constraint. [New]. |
| None | Financial plan. [New]. |
| None | Freight shippers. [New]. |
| Governor | Governor. |
| None | Illustrative project. [New]. |
| None | Indian Tribal government. [New]. |
| None | Intelligent transportation system (ITS). [New]. |
| None | Interim metropolitan transportation plan. [New]. |
| None | Interim transportation improvement program (TIP). [New]. |
| Maintenance area | Maintenance area. [Revised]. |
| Major metropolitan transportation investment | Removed. |
| Management system | Management system. [Revised]. |
| Metropolitan planning area | Metropolitan planning area. [Revised]. |
| Metropolitan planning organization | Metropolitan planning organization. |
| (MPO) | (MPO). [Revised]. |
| Metropolitan transportation plan | Metropolitan transportation plan. |
| None | National ambient air quality standards. [New]. |
| Nonattainment area | Nonattainment area. |
| Non-metropolitan area | Non-metropolitan area. |
| Non-metropolitan local official | Non-metropolitan local official. |
| None | Obligated projects. [New]. |
| None | Operational and management strategies. [New]. |
| None | Project selection. [New]. |
| None | Provider of freight transportation services. [New]. |
| None | Regional ITS architecture. [New]. |
| None | Regional transit security strategy. |
| Regionally significant project | Regionally significant project. [Revised]. |
| None | Revision. [New]. |
| State | State. |
| State implementation plan (SIP) | State implementation plan (SIP). [Revised]. |
| Statewide transportation improvement Program (STIP) | Statewide transportation improvement program (STIP). |
| Statewide transportation plan | Long-range statewide transportation plan. [Revised]. |
| None | Strategic Highway Safety Plan. [New]. |
| None | Transportation control measures (TCMs). [New]. |

| Old section | New section |
|---|---|
| Transportation improvement program (TIP) | Transportation improvement program (TIP). [Revised]. |
| Transportation management area (TMA) | Transportation management area (TMA). [Revised]. |
| None | Unified planning work program (UPWP). [New]. |
| None | Update. [New]. |
| None | Urbanized area. [New]. |
| None | Users of public transportation. [New]. |
| None | Visualization techniques. [New]. |
| *Subpart B* | *Subpart B* |
| 450.200 | 450.200. [Revised]. |
| 450.202 | 450.202. [Revised]. |
| 450.204 | 450.204. [Revised]. |
| 450.206(a)(1) through (a)(5) | Removed. |
| 450.206(b) | 450.208(a)(1). [Revised]. |
| 450.206(c) | 450.208(a)(3). |
| 450.208(a)(1) | 450.208(d). [Revised]. |
| 450.208(a)(2) through (a)(23) | 450.206(a)(1) through (a)(8). [Revised]. |
| 450.208(b) | 450.206(b). [Revised]. |
| None | 450.206(c). [New]. |
| 450.210(a)(1) through (a)(13) | 450.208(a)(1) through (a)(7). [Revised]. |
| 450.210(b) | Removed. |
| None | 450.208(b). [New]. |
| None | 450.208(c). [New]. |
| None | 450.208(e). [New]. |
| None | 450.208(f). [New]. |
| None | 450.208(g). [New]. |
| None | 450.208(h). [New]. |
| 450.212(a) through (g) | 450.210(a). [Revised]. |
| 450.212(h) through (i) | 450.210(b)(1) through (b)(2). [Revised]. |
| None | 450.210(c). [New]. |
| None | 450.212. [New]. |
| 450.214(a) through (b)(3) | 450.214(a). [Revised]. |
| None | 450.214(b). [New]. |
| 450.214(b)(4) | 450.214(e). [Revised]. |
| 450.214(b)(5) | 450.214(c). [Revised]. |
| 450.214(b)(6) | 450.214(k). [Revised]. |
| None | 450.214(d). [Revised]. |
| None | 450.214(e). [New]. |
| 450.214(c)(1) through (c)(5) | 450.214(g) and (h). [Revised]. |
| 450.214(d) | Removed. |
| None | 450.214(i). [New]. |
| None | 450.214(j). [New]. |
| None | 450.214(m). [New]. |
| None | 450.214(n). [New]. |
| 450.214(e) | 450.214(o). |
| None | 450.214(p). [New]. |
| 450.214(f) | 450.214(f). [Revised]. |
| 450.216(a) last sentence | 450.216(g). [Revised]. |
| 450.216(a)(1) through (a)(2) | 450.216(a) through (b). [Revised]. |
| 450.216(a)(3) | 450.216(k). |
| None | 450.216(l). [New]. |
| 450.216(a)(4) | 450.216(b). [Revised]. |
| None | 450.216(d). [New]. |
| None | 450.216(e). [New]. |
| 450.216(a)(5) | 450.216(m). [Revised]. |
| 450.216(a)(6) | 450.216(g). [Revised]. |
| 450.216(a)(7) | 450.216(h). [Revised]. |
| 450.216(a)(8) | 450.216(i). [Revised]. |
| 450.216(a)(9) | Removed. |
| 450.216(b) | 450.216(j). [Revised]. |
| None | 450.216(f). [New]. |
| None | 450.216(n). [New]. |
| None | 450.216(m). [New]. |
| 450.216(c) through (d) | 450.216(o). |
| 450.216(e) | 450.216(c). [Revised]. |
| 450.218 | 450.206(d). [Revised]. |
| 450.220(a) through (g) | 450.218(a) through (d). [Revised]. |
| 450.222(a) through (d) | 450.220(a) through (e). [Revised]. |
| None | 450.222. [New]. |
| 450.224(a) through (b) | 450.224(a) through (c). [Revised]. |
| *Subpart C* | *Subpart C* |
| 450.300 | 450.300. [Revised]. |
| 450.302 | 450.302. [Revised]. |
| 450.304 | 450.304. [Revised]. |
| 450.306(a) through (d) | 450.310(a) through (d). [Revised]. |

| Old section | New section |
|---|---|
| None | 450.310(f). [New]. |
| 450.306(e) | 450.310(g). |
| None | 450.310(h). [New]. |
| 450.306(f) | 450.310(i). [Revised]. |
| 450.306(g) | 450.310(j). [Revised]. |
| 450.306(h) | 450.310(e). [Revised]. |
| 450.306(i) through (j) | Removed. |
| 450.306(k) | 450.310(l) through (m). [Revised]. |
| None | 450.310(k). [New]. |
| 450.308(a) through (c) | 450.312(a), (b), and (i). [Revised]. |
| None | 450.312(c). [New]. |
| None | 450.312(d). [New]. |
| None | 450.312(e). [New]. |
| None | 450.312(f). [New]. |
| None | 450.312(g). [New]. |
| None | 450.312(h). [New]. |
| 450.308(d) | 450.312(j). [Revised]. |
| 450.310(a), (b), and (d) | 450.314(a). [Revised]. |
| None | 450.314(a)(1). [New]. |
| None | 450.314(a)(2). [New]. |
| 450.310(c) | 450.314(c). |
| 450.310(e) | Removed. |
| 450.310(f) | 450.314(b). [Revised]. |
| 450.310(g) | 450.314(d). [Revised]. |
| 450.310(h) | Removed. |
| None | 450.314(f). [New]. |
| 450.312(a) | Removed. |
| 450.312(b) | Removed. |
| 450.312(c) | 450.322(d). [Revised]. |
| 450.312(d) | Removed. |
| 450.312(e) | 450.314(e). |
| 450.312(f) | 450.306(i). |
| 450.312(g) | Removed. |
| 450.312(h) | Removed. |
| 450.312(i) | 450.316(c) through (d). [Revised]. |
| None | 450.316(e). [New]. |
| None | 450.308(a). [New]. |
| 450.314(a) through (d) | 450.308(b) through (e). [Revised]. |
| None | 450.308(f). [New]. |
| 450.316(a)(1) through (a)(16) | 450.306(a)(1) through (a)(8). [Revised]. |
| None | 450.306(b). [New]. |
| None | 450.306(c). [New]. |
| None | 450.306(d). [New]. |
| None | 450.306(e). [New]. |
| None | 450.306(f). [New]. |
| None | 450.306(g). [New]. |
| None | 450.306(h). [New]. |
| None | 450.316(a). [New]. |
| 450.316(b)(1)(i) | 450.316(a)(3). [Revised]. |
| 450.316(b)(1)(ii) through (b)(1)(vi) | 450.316(a)(1)(i) through (a)(1)(vi). [Revised]. |
| 450.316(b)(1)(vii) | 450.316(a)(2)(). [Revised]. |
| 450.316(b)(1)(viii) through (b)(1)(xi) | 450.316(a)(1)(vii) through (a)(1)(x). [Revised]. |
| 450.316(b)(2) | Removed. |
| 450.316(b)(3) | Removed. |
| 450.316(b)(4) | Removed. |
| None | 450.316(b). [New]. |
| 450.312(i) | 450.316(c). |
| None | 450.316(d). [New]. |
| 450.316(c) | 450.306(j). [Revised]. |
| 450.316(d) | Removed. |
| 450.318(a) through (f) | 450.318(a) through (c). [Revised]. |
| 450.320(a) through (c) | 450.320(a) through (f). [Revised]. |
| 450.322(a) and (e) | 450.322(a) through (c). [Revised]. |
| None | 450.322(e). [New]. |
| 450.322(b)(1) through (b)(2) | 450.322(f)(1) through (f)(2). [Revised]. |
| 450.322(b)(3) | 450.322(f)(8). [Revised]. |
| 450.322(b)(4) through (b)(7) | 450.322(f)(3) through (f)(6). [Revised]. |
| 450.322(b)(8) | Removed. |
| 450.322(b)(9) | 450.322(f)(7). [Revised]. |
| 450.322(b)(10) | Removed. |
| 450.322(b)(11) | 450.322(f)(8). [Revised]. |
| None | 450.322(g)(1) through (g)(2). [New]. |
| None | 450.322(h). [New]. |
| 450.322(c) | 450.322(i). [Revised]. |

| Old section | New section |
|---|---|
| None | 450.322(j). [New]. |
| None | 450.322(k). [New]. |
| 450.322(d) | 450.322(l). [Revised]. |
| 450.324(a) through (n) | 450.324(a) through (j). [Revised]. |
| None | 450.324(k). [New]. |
| None | 450.324(l). [New]. |
| 450.326 | 450.326(a). [Revised]. |
| 450.328(a) through (b) | 450.326(b) through (c). [Revised]. |
| 450.330(a) through (b) | 450.328(a) through (b). [Revised]. |
| None | 450.328(c) through (e). [New]. |
| 450.324(o) | 450.328(f). [Revised]. |
| 450.332(a) through (e) | 450.330(a) through (e). [Revised]. |
| None | 450.332(a) through (c). [New]. |
| 450.334(a) through (h) | 450.334(a) through (b). [Revised]. |
| None | 450.336. [New]. |
| 450.336 | 450.338(a) through (d). [Revised]. |
| 500.109 (a) through (c) | 500.109(a) through (b). [Revised]. |

**Rulemaking Analyses and Notices**

All comments received on or 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, we will 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 FHWA and FTA have determined preliminarily that this rulemaking would be a significant regulatory action within the meaning of Executive Order 12866, and is significant under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. The changes proposed herein would add new coordination and documentation requirements (*e.g.*, greater public outreach and consultation with State and local planning and resource agencies, annual listing of obligated projects, etc.), but would reduce the frequency of some existing regulatory reporting requirements (*e.g.*, metropolitan transportation plan, STIP/TIP, and certification reviews). In preparing this proposal, the FHWA and the FTA have sought to maintain existing flexibility of operation wherever possible for State DOTs, MPOs, and other affected organizations, and to utilize existing processes to accomplish any new tasks or activities.

The FHWA and the FTA have conducted a cost analysis identifying each of the proposed regulatory changes that would have a significant cost impact for MPOs or State DOTs, and have estimated those costs on an annual basis. This cost analysis is included as a separate document, entitled ''Regulatory Cost Analysis of Proposed Rulemaking,'' and is available for review in the docket. Based on the cost analysis, we estimate that the aggregate increase in costs over current expenditures attributable to this rulemaking for all 52 State DOTs and 384 MPOs would be approximately $19.8 million per year, or about $46,000 per agency, on average. Eighty (80) percent of these costs are directly reimbursable through Federal transportation funds allocated for metropolitan planning. [23 U.S.C. 104(f) and 49 U.S.C. 5303(h)] and for State planning and research [23 U.S.C. 505 and 49 U.S.C. 5313]. Furthermore, the SAFETEA–LU significantly increased the mandatory set-aside in Federal funds for metropolitan transportation planning, as well as Statewide Planning and Research funding. In addition, the State DOTs and MPOs have the flexibility to use most other Federal highway dollars for transportation planning if they so desire. Consequently, the increase in non-Federal cost burden attributable to this proposed rulemaking is estimated to be only $4 million per year in total, or about $9,100 per agency, on average. Therefore, we believe that the economic impact of this rulemaking would be minimal.

The FHWA and the FTA welcome comments on the economic impacts of these proposed regulations. Comments, including those from the State DOTs and MPOs, regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating the impacts of this ongoing planning process requirement. Hence, we encourage comments on all facets of this proposal regarding its costs, burdens, and impacts.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), the FHWA and the FTA have determined that States and metropolitan planning organizations are not included in the definition of small entity set forth in 5 U.S.C. 601. Small governmental jurisdictions are limited to representations of populations of less than 50,000. Metropolitan planning organizations, by definition represent urbanized areas having a minimum population of 50,000. Therefore the Regulatory Flexibility Act does not apply.

**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). This proposed rule will not result in the expenditure of non-Federal funds by State, local, and Tribal governments, in the aggregate, or by the private sector, of $120.7 million in any one year (2 U.S.C. 1532).

Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes

made in the program by the Federal government. The Federal-aid highway program and Federal Transit Act permit this type of flexibility to the States.

**Executive Order 13132 (Federalism)**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA and the FTA have determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA and the FTA have also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Comment is solicited specifically on the Federalism implications of this proposal.

By letter dated November 29, 2005, the FHWA and the FTA solicited comments from the National Governors' Association (NGA) as representatives for the elected State officials on the Federalism implications of this proposed rule.[19] An identical letter was sent on the same date to several other organizations representing elected officials and Indian Tribal governments. These organizations were: the National Conference of State Legislators (NCSL), the American Public Works Association (APWA), the Association of Metropolitan Planning Organizations (AMPO), the National Association of Regional Councils (NARC), the National Association of Counties (NACO), the Conference of Mayors (COM), the National Association of City Transportation Officials (NACTO), and the National Congress of American Indians (NCAI).

In response to this letter, AMPO and NARC requested a meeting to discuss their Federalism concerns. On December 21, 2005, we met with representatives from AMPO and NARC. A summary of this meeting is available in the docket. Briefly, both AMPO and NARC expressed concern with the potential burdens that new requirements might have on MPOs, especially the smaller MPOs. In particular, AMPO and NARC were concerned with our implementation of the SAFETEA–LU provisions relating to public participation, congestion management process, and implementation of planning update cycles. During the meeting, the FHWA and the FTA indicated that we would consider the issues discussed at the meeting. In response to the concerns raised, we propose flexible public participation requirements in Section 450.316, recognizing the wide variations among MPO capabilities and needs. Regarding the implementation of planning update cycles, the FHWA and the FTA note that 23 U.S.C. 134(b) and 135(b) and 49 U.S.C. 5303(b) and 5304(b) state that ''beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.'' The FHWA and the FTA do not have the legal authority to allow flexibility with regard to this date.

[19] A copy of this letter is included in the docket.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction (or 20.217); 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs and were carried out as part of the outreach on the Federalism implications of this rulemaking. The FHWA and the FTA solicit comments on this issue.

**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 FHWA and the FTA have determined that this proposal contains collection of information requirements for the purposes of the Paperwork Reduction Act. However, the FHWA and the FTA believe that any increases in burden hours per submission are more than offset by decreases in the frequency of collection for these information requirements.

The reporting requirements for metropolitan planning unified planning work programs (UPWPs), transportation plans, and transportation improvement programs (TIPs) are currently approved under OMB control number 2132–0529 (expiration date: 06/30/2007). The information reporting requirements for State planning work programs have been approved by the OMB under control number 2125–0039. The FTA conducted the analysis supporting this approval on behalf of both the FTA and the FHWA, since the regulations are jointly issued by both agencies. The reporting requirements for statewide transportation plans and programs are also approved under this same OMB control number. The information collection requirements addressed under the current OMB approval number (2132–0529) impose a total burden of 314,900 hours on the planning agencies that must comply with the requirements in the existing regulation. The FHWA and the FTA conducted an analysis of the change in burden hours attributed to the proposed rulemaking, based on estimates used in the submission for OMB approval. This analysis is included as a separate document entitled ''Estimated Change in Reporting Burden Hours Attributable to Proposed Rulemaking'', and is available for review in the docket. The analysis results are summarized below.

The creation and submission of required reports and documents have been limited to those specifically required by 23 U.S.C. 134 and 135 and in 49 U.S.C. 5303 and 5304 or essential to the performance of our findings, certifications and/or approvals. Under the proposed rulemaking, there would be no significant change in the submission requirements for UPWPs or State planning work programs; therefore there is no change in the annual reporting burden for this element. The proposed rulemaking would require that additional sections be added to the metropolitan and statewide transportation plans, which we estimate would increase the required level of effort by 20 percent over current plan development. However, the proposed rulemaking would also reduce the required frequency of plan submission from 3 to 4 years for MPOs located in nonattainment or maintenance areas. One half of all MPOs are located in nonattainment or maintenance areas and would realize a reduction in their annual reporting burden. Based on the burden hours used in the FTA analysis submitted for OMB approval, the decrease in burden hours for MPOs located in nonattainment and maintenance areas more than offsets the increase in burden hours associated with the new sections required in the plans.

The proposed rulemaking requires that State and metropolitan transportation improvement program (STIP and TIP) documents include 4 years of projects; an increase from 3 years of projects required under current regulations. We estimate that the inclusion of an additional year of projects would increase the reporting burden associated with TIP development by 10 percent over current levels. However, the proposed rulemaking would also reduce the

required frequency of TIP submission from 2 years to 4 years for all States and MPOs. Based on the burden hours used in the FTA analysis submitted for OMB approval, the decrease in burden hours associated with the reduced frequency of submission more than offsets the increase in burden hours associated with including an additional year of projects in the TIP.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA and the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**National Environmental Policy Act**

The FHWA and the FTA have analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and have determined that this proposed action would not have any effect on the quality of the environment.

**Executive Order 12988 (Civil Justice Reform)**

This action 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.

**Executive Order 13045 (Protection of Children)**

We have analyzed this action 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 safety that may disproportionately affect children.

**Executive Order 12630 (Taking of Private Property)**

This rule would 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.

**Executive Order 13175 (Tribal Consultation)**

The FHWA and the FTA have analyzed this action under Executive Order 13175, dated November 6, 2000, and believe that the proposed action would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal laws. The planning regulations contain requirements for States to consult with Indian Tribal governments in the planning process. Tribes are required under 25 CFR 170 to develop long range plans and develop an Indian Reservation Roads (IRR) TIP for programming IRR projects. However, the requirements in 25 CFR part 170 would not be changed by this rulemaking. Therefore, a Tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order because although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

**Executive Order 12898 (Environmental Justice)**

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA and the FTA also believe that the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) apply to this proposed rule. The FHWA and the FTA have preliminarily determined that this proposed rule does not raise any environmental justice issues. The agencies request comment on this assessment.

**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**

*23 CFR Parts 450 and 500*

Grant programs—transportation, Highway and roads, Mass transportation, Reporting and recordkeeping requirements.

*49 CFR Part 613*

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA and the FTA propose to revise title 23, Code of Federal Regulations, parts 450 and 500 and title 49, Code of Federal Regulations, part 613 as set forth below:

**Title 23—Highways**

1. Revise part 450 to read as follows:

## PART 450—PLANNING ASSISTANCE AND STANDARDS

**Subpart A—Transportation Planning and Programming Definitions**

Sec.
450.100 Purpose.
450.102 Applicability.
450.104 Definitions.

**Subpart B—Statewide Transportation Planning and Programming**

450.200 Purpose.
450.202 Applicability.
450.204 Definitions.
450.206 Scope of the statewide transportation planning process.
450.208 Coordination of planning process activities.
450.210 Interested parties, public involvement, and consultation.
450.212 Transportation planning studies and project development.
450.214 Development and content of the long-range statewide transportation plan.
450.216 Development and content of the statewide transportation improvement program (STIP).
450.218 Self-certifications, Federal findings, and Federal approvals.
450.220 Project selection from the STIP.
450.222 Applicability of NEPA to statewide transportation plans and programs.
450.224 Phase-In of new requirements.

**Subpart C—Metropolitan Transportation Planning and Programming**

450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Scope of the metropolitan transportation planning process.
450.308 Funding for transportation planning and unified planning work programs.
450.310 Metropolitan planning organization designation and redesignation.
450.312 Metropolitan planning area boundaries.
450.314 Metropolitan planning agreements.
450.316 Interested parties, participation, and consultation.

450.318 Transportation planning studies and project development.
450.320 Congestion management process in transportation management areas.
450.322 Development and content of the metropolitan transportation plan.
450.324 Development and content of the transportation improvement program (TIP).
450.326 TIP revisions and relationship to the STIP.
450.328 TIP action by the FHWA and the FTA.
450.330 Project selection from the TIP.
450.332 Annual listing of obligated projects.
450.334 Self-certifications and Federal certifications.
450.336 Applicability of NEPA to metropolitan transportation plans and programs.
450.338 Phase-in of new requirements.
Appendix A to part 450—Linking the transportation planning and NEPA processes.
Appendix B to part 450—Fiscal constraint of transportation plans and programs.

**Authority:** 23 U.S.C. 134–135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5304; 49 CFR 1.48 and 1.51.

## Subpart A—Transportation Planning and Programming Definitions

### § 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

### § 450.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

### § 450.104 Definitions.

Unless otherwise specified, the definitions in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are applicable to this part.

*Administrative modification* means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is not significant enough to require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas). Examples of administrative modifications include minor changes in the cost or initiation date of included projects.

*Alternatives analysis (AA)* means a study required for eligibility of funding under the Federal Transit Administration's (FTA's) Capital Investment Grant program (49 U.S.C. 5309), which includes an assessment of a range of alternatives designed to address a transportation problem in a corridor or subarea, resulting in sufficient information to support selection by State and local officials of a locally preferred alternative for adoption into a metropolitan transportation plan, and for the Secretary to make decisions to advance the locally preferred alternative through the project development process, as set forth in 49 CFR part 611 (Major Capital Investment Projects).

*Amendment* means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that is significant enough to require public review and comment, redemonstration of fiscal constraint, and/or a conformity determination (in nonattainment and maintenance areas). Examples of amendments include the addition or deletion of a regionally significant project, or a substantial change in the cost, design concept, or design scope of an included project.

*Attainment area* means any geographic area considered to have air quality that meets or exceeds the U. S. Environmental Protection Agency's (EPA's) health standards in the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*). An area may be an attainment area for one pollutant and a nonattainment area for others. A ''maintenance area'' (see definition below) is not considered an attainment area for transportation planning purposes.

*Available funds* means, for projects or project phases in the first two years of the metropolitan Transportation Improvement Program (TIP) and/or Statewide Transportation Improvement Program (STIP) in air quality nonattainment and maintenance areas, funds derived from an existing source dedicated to or historically used for transportation purposes. For Federal funds, authorized and/or appropriated funds and the extrapolation of formula and discretionary funds at historic rates of increase are considered ''available.'' A similar approach may be used for State and local funds that are dedicated to or historically used for transportation purposes.

*Committed funds* means, for projects or project phases in the first two years of a TIP and/or STIP in air quality nonattainment and maintenance areas, funds that have been dedicated or obligated for transportation purposes. For State funds that are not dedicated to transportation purposes, only those funds over which the Governor has control may be considered ''committed.'' Approval of a TIP by the Governor is considered a commitment of those funds over which the Governor has control. For local or private sources of funds not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing (*e.g.*, letter of intent) by the responsible official or body having control of the funds may be considered a commitment.

*Conformity* means the process to assess the compliance of a transportation plan, program, or project with the State Implementation Plan (SIP) for air quality. The conformity process is defined in the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) and governed by the EPA under its transportation conformity rule (40 CFR part 93).

*Conformity lapse* means, pursuant to section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), as amended, that the conformity determination for a metropolitan transportation plan or TIP has expired and thus there is no currently conforming metropolitan transportation plan or TIP.

*Congestion management process* means a systematic approach required in transportation management areas (TMAs) that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23, U.S.C., and title 49, U.S.C., through the use of operational management strategies.

*Consideration* means that one or more parties takes into account the opinions, action, and relevant information from other parties in making a decision or determining a course of action.

*Consultation* means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken.

*Cooperation* means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective.

*Coordinated public transit-human services transportation plan* means a unified, comprehensive strategy for transit service delivery developed by public, private, and non-profit providers of transportation and human services, with participation by the public, including people with disabilities, older adults, and individuals with lower incomes, in order to minimize duplication and maximize collective coverage. The plan is a requirement under the FTA formula programs for the Elderly and Persons with Disabilities (49 U.S.C. 5310), Job Access and Reverse Commute (49 U.S.C. 5316), and New Freedom (49 U.S.C. 5317), but may include other Federal, State, or local programs.

*Coordination* means the cooperative development of plans, programs, and schedules among agencies and entities with legal standing and adjustment of such plans, programs, and schedules to achieve general consistency, as appropriate.

*Design concept* means the type of facility identified for a transportation improvement project (*e.g.,* freeway, expressway, arterial highway, grade-separated highway, toll road, reserved right-of-way rail transit, mixed-traffic rail transit, or exclusive busway).

*Design scope* means the aspects that will affect the proposed facility's impact on the region, usually as they relate to vehicle or person carrying capacity and control (*e.g.,* number of lanes or tracks to be constructed or added, length of project, signalization, safety features, access control including approximate number and location of interchanges, or preferential treatment for high-occupancy vehicles).

*Environmental mitigation activities* means strategies, policies, programs, actions, and activities that, over time, will serve to avoid, minimize, rectify, reduce, or compensate for (by replacing or providing substitute resources) the impacts to or disruption of elements of the human and natural environment associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan. The human and natural environment includes, for example, neighborhoods and communities, homes and businesses, cultural resources, parks and recreation areas, wetlands and water sources, forested and other natural areas, agricultural areas, endangered and threatened species, and the ambient air. The environmental mitigation strategies and activities are intended to be regional in scope, even though the mitigation may address potential project-level impacts. The environmental mitigation strategies and activities must be developed in consultation with Federal, State, and Tribal wildlife, land management, and regulatory agencies during the statewide and metropolitan transportation planning processes and be reflected in all adopted transportation plans.

*Federal land management agency* means units of Federal Government currently responsible for the administration of public lands (*e.g.,* U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the National Park Service).

*Federally funded non-emergency transportation services* means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

*Financially constrained or Fiscal Constraint* means that each program year in the TIP and the STIP includes sufficient financial information for demonstrating that projects can be implemented using current and/or reasonably available revenues, by source, while the entire transportation system is being adequately operated and maintained. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available or committed.''

*Financial plans* means documentation required to be included with metropolitan transportation plans, TIPs, and STIPs that demonstrates the consistency between reasonable available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements, as well as operating and maintaining the entire transportation system.

*Freight shippers* means any business that routinely transports its products from one location to another by providers of freight transportation services or by its own vehicle fleet.

*Governor* means the Governor of any of the 50 States or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia.

*Illustrative project* means a transportation project that would be included in a metropolitan transportation plan, TIP, or STIP for which financial constraint had been demonstrated if reasonable additional resources beyond those identified in the financial plan were available.

*Indian Tribal government* means a duly formed governing body for an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454.

*Intelligent transportation system (ITS)* means electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

*Interim metropolitan transportation plan* means a transportation plan composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO.

*Interim transportation improvement program (TIP)* means a TIP composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO and the Governor.

*Long-range statewide transportation plan* means the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.

*Maintenance area* means any geographic region of the United States that the EPA previously designated as a nonattainment area for one or more pollutants pursuant to the Clean Air Act Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under section 175(a) of the Clean Air Act, as amended.

*Management system* means a systematic process, designed to assist decisionmakers in selecting cost effective strategies/actions to improve the efficiency and safety of, and protect the investment in the nation's infrastructure. A management system includes identification of performance measures; data collection and analysis; determination of needs; evaluation, and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

*Metropolitan planning area* means the geographic area determined by agreement between the metropolitan planning organization (MPO) for the area and the Governor, in which the metropolitan transportation planning process is carried out.

*Metropolitan planning organization (MPO)* means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.

*Metropolitan transportation plan* means the official multimodal transportation plan covering a period of no less than 20 years that is developed, adopted, and updated by the MPO through the metropolitan transportation planning process.

*National ambient air quality standard (NAAQS)* means those standards established pursuant to section 109 of the Clean Air Act.

*Nonattainment area* means any geographic region of the United States that has been designated by the EPA as a nonattainment area under section 107 of the Clean Air Act for any pollutants for which a NAAQS exists.

*Non-metropolitan area* means a geographic area outside designated metropolitan planning areas.

*Non-metropolitan local officials* means elected and appointed officials of general purpose local government in a non-metropolitan area with responsibility for transportation.

*Obligated projects* means strategies and projects funded under title 23, U.S.C., and title 49, U.S.C., Chapter 53 for which the supporting Federal funds were authorized and committed by the State or designated recipient in the preceding program year.

*Operational and management strategies* means actions and strategies aimed at improving the performance of existing and planned transportation facilities to relieve vehicular congestion and maximizing the safety and mobility of people and goods.

*Project selection* means the procedures followed to advance projects from the first four years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures.

*Provider of freight transportation services* means any business that transports or otherwise facilitates the movement of goods from one location to another for other businesses or for itself.

*Regional ITS architecture* means a regional framework for ensuring institutional agreement and technical integration for the implementation of ITS projects or groups of projects.

*Regionally significant project* means a transportation project (other than projects that may be grouped in the STIP or TIP pursuant to § 450.216 and § 450.324 or exempt projects as defined in EPA's transportation conformity regulation (40 CFR part 93) that is on a facility which serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region, major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network . At a minimum, this includes all capacity expanding projects on principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

*Regional transit security strategy* means an overarching strategy for the region with mode-specific goals and objectives as they relate to prevention, detection, response, and recovery as a sustainable effort to protect regional transit systems' critical infrastructure from terrorism, with an emphasis on explosives and non-conventional threats that would cause major loss of life and severe disruption, as required by the Department of Homeland Security.

*Revision* means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A revision may or may not be significant. A significant revision is defined as an ''amendment,'' while a non-significant revision is defined as an ''administrative modification.''

*State* means any one of the fifty states, the District of Columbia, or Puerto Rico.

*State implementation plan (SIP)* means an EPA—approved, State developed plan mandated by the Clean Air Act for air quality nonattainment areas that contains procedures to monitor, control, attain, maintain, and enforce compliance with the NAAQS.

*Statewide transportation improvement program (STIP)* means a statewide staged, at least four-year, multi-year program of transportation projects that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under 23 U.S.C. and 49 U.S.C. Chapter 53.

*Strategic highway safety plan* means a plan developed by the State DOT in accordance with the requirements of 23 U.S.C. 148(a)(6).

*Transportation control measure (TCM)* means any measure that is specifically identified and committed to in the applicable SIP that is either one of the types listed in section 108 of the Clean Air Act or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs.

*Transportation improvement program (TIP)* means a staged, at least four-year, multi-year program of projects developed and formally adopted by an MPO as part of the metropolitan transportation planning process that is consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under 23 U.S.C. and 49 U.S.C. Chapter 53.

*Transportation management area (TMA)* means an urbanized area with a population over 200,000, as defined by the Bureau of the Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the Governor and the MPO and designated by the Secretary of Transportation.

*Unified planning work program (UPWP)* means a statement of work identifying the planning priorities and activities to be carried out within a metropolitan planning area. At a minimum, a UPWP includes a description of the planning work and resulting products, who will perform the work, time frames for completing the work, the cost of the work, and the source(s) of funds.

*Update* means a complete change to a long-range statewide or metropolitan transportation plan, TIP, or STIP in order to meet the regular schedule as prescribed by Federal statute. Updates always require public review and comment, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (in nonattainment and maintenance areas).

*Urbanized area* means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

*Users of public transportation* means any person, or groups representing such persons, who use transportation open to the general public, other than taxis and other privately funded and operated vehicles.

*Visualization techniques* means methods employed by States and MPOs in the development of transportation plans and programs with the public, elected and appointed officials, and other stakeholders in a clear and easily accessible format such as maps, pictures, and/or displays, to promote improved understanding of existing or proposed transportation plans and programs.

## Subpart B—Statewide Transportation Planning and Programming

### § 450.200 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 135 and 49 U.S.C. 5304, as amended, which require each State to carry out a continuing, cooperative, and comprehensive statewide multimodal transportation planning process, including the development of a long-range statewide transportation plan and statewide transportation improvement program (STIP), that facilitates the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and that fosters economic growth and development within and between States and urbanized areas, while minimizing transportation-related

fuel consumption and air pollution in all areas of the State, including those areas subject to the metropolitan transportation planning requirements of 23 U.S.C. 134 and 49 U.S.C. 5303.

**§ 450.202 Applicability.**

The provisions of this subpart are applicable to States and any other organizations or entities (*e.g.,* metropolitan planning organizations (MPOs) and public transportation operators) that are responsible for satisfying the requirements for transportation plans and programs throughout the State pursuant to 23 U.S.C. 135 and 49 U.S.C. 5304.

**§ 450.204 Definitions.**

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

**§ 450.206 Scope of the statewide transportation planning process.**

(a) Each State shall carry out a continuing, cooperative, and comprehensive statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will address the following factors:

(1) Support the economic vitality of the United States, the States, metropolitan areas, and non-metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for all motorized and non-motorized users;

(3) Increase the ability of the transportation system to support homeland security and to safeguard the personal security of all motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(7) Promote efficient system management and operation; and

(8) Emphasize the preservation of the existing transportation system.

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in all aspects of the statewide transportation planning process, including activities such as the formulation of goals, objectives, performance measures, and evaluation criteria for use in developing the long-range statewide transportation plan; identification of prioritization criteria for projects and strategies reflected in the STIP; and development of short-range planning studies, strategic planning and/or policy studies, or transportation needs studies.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court in any matter affecting a long-range statewide transportation plan, STIP, project or strategy, or the FHWA/FTA planning process findings.

(d) Funds provided under 23 U.S.C. 505 and 49 U.S.C. 5305(e) are available to the State to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (3) and 105 and 49 U.S.C. 5307 may also be used. Statewide transportation planning activities performed with funds provided under title 23, U.S.C., and 49 U.S.C., Chapter 53 shall be documented in a statewide planning work program in accordance with the provisions of 23 CFR part 420. The work program should include a discussion of the transportation planning priorities facing the State.

**§ 450.208 Coordination of planning process activities.**

(a) In carrying out the statewide transportation planning process, each State shall:

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. The State is encouraged to rely on information, studies, or analyses provided by MPOs for portions of the transportation system located in metropolitan planning areas;

(2) Coordinate planning carried out under this subpart with statewide trade and economic development planning activities and related multistate planning efforts;

(3) Coordinate planning carried out under this subpart with planning by Federal land management agencies that have jurisdiction over land within the boundaries of the State;

(4) Consider the concerns of local elected and appointed officials with responsibilities for transportation in non-metropolitan areas;

(5) Consider the concerns of Indian Tribal governments that have jurisdiction over land within the boundaries of the State;

(6) Coordinate transportation plans, programs, and planning activities with related planning activities being conducted outside of metropolitan planning areas and between States; and

(7) Establish a forum for coordinating data collection and analyses to support statewide transportation planning and programming priorities and decisions.

(b) The State air quality agency shall coordinate with the State department of transportation (State DOT) to develop the transportation portion of the State Implementation Plan (SIP) consistent with the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(c) Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities under this subpart related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective. However, the U. S. Congress reserves the right to alter, amend, or repeal interstate compacts entered into under this part.

(d) States may use any one or more of the management systems (in whole or in part) described in 23 CFR part 500.

(e) States are encouraged to apply asset management principles and techniques in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance.

(f) The statewide transportation planning process shall be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) The statewide transportation planning process should be consistent with the development of Coordinated Public Transit-Human Services Transportation Plans, as required by 49 U.S.C. 5310, 5316, and 5317.

(h) The statewide transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and the Regional Transit Security Strategy as required by the Department of Homeland Security.

**§ 450.210 Interested parties, public involvement, and consultation.**

(a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement

process that provides opportunities for public review and comment at key decision points.

(1) The State's public involvement process at a minimum shall:

(i) Establish early and continuous public involvement opportunities that provide timely information about transportation issues and decisionmaking processes to citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties;

(ii) Provide reasonable public access to technical and policy information used in the development of the long-range statewide transportation plan and the STIP;

(iii) Provide adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP;

(iv) To the maximum extent practicable, ensure that public meetings are held at convenient and accessible locations and times;

(v) To the maximum extent practicable, use visualization techniques to describe the proposed long-range statewide transportation plan and supporting studies;

(vi) To the maximum extent practicable, make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information;

(vii) Demonstrate explicit consideration and response to public input during the development of the long-range statewide transportation plan and STIP;

(viii) Include a process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services; and

(ix) Provide for the periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all interested parties and revise the process, as appropriate.

(2) The State shall provide for public comment on existing and proposed processes for public involvement in the development of the long-range statewide transportation plan and the STIP. At a minimum, the State shall allow 45 calendar days for public review and written comment before the procedures and any major revisions to existing procedures are adopted. The State shall provide copies of the approved public involvement process document(s) to the FHWA and the FTA for informational purposes.

(b) The State shall provide for non-metropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this consultation process(es), copies of the process document(s) shall be provided to the FHWA and the FTA for informational purposes.

(1) At least once every five years (as of February 24, 2006), the State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the consultation process and any proposed revisions. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials.

(2) The State, at its discretion, shall be responsible for determining whether to adopt any proposed revisions. If a proposed revision is not adopted, the State shall make publicly available its reasons for not accepting the proposed revision, including notification to non-metropolitan local officials or their associations.

(c) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan and STIP in consultation with the Tribal government and the Secretary of Interior. States are encouraged to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and Federal land management agencies in the development of the long-range statewide transportation plan and the STIP.

**§ 450.212 Transportation planning studies and project development.**

(a) An MPO(s), State(s), and/or public transportation operator(s) may undertake a corridor or subarea planning study as part of the statewide transportation planning process. The results of these transportation planning studies may be incorporated into the overall project development process to the extent that they meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies maybe used to produce any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (i.e., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Description of the affected environment; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents produced by, or in support of, the transportation planning process described in this subpart may be incorporated by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, to the extent that:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The corridor or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Continual opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment and other means of incorporation by reference that the NEPA lead agencies deem appropriate. Additional details on linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part.

**§ 450.214 Development and content of the long-range statewide transportation plan.**

(a) The State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period, that provides for the development and implementation of the multimodal transportation system for the State. The long-range statewide transportation plan shall consider and include, as applicable, elements and connections between public transportation, non-motorized modes, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel.

(b) The long-range statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

(c) The long-range statewide transportation plan shall reference, summarize, or contain any applicable short-range planning studies; strategic planning and/or policy studies; transportation needs studies; management systems reports; emergency relief and disaster preparedness plans; and any statements of policies, goals, and objectives on issues (e.g., transportation, safety, economic development, social and environmental effects, or energy) that were relevant to the development of the long-range statewide transportation plan.

(d) The long-range statewide transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects contained in the Strategic Highway Safety Plan required by 23 U.S.C. 148.

(e) The long-range statewide transportation plan should include a security element that incorporates or summarizes the priorities, goals, or projects set forth in the Regional Transit Security Strategy(ies), as required by the Department of Homeland Security.

(f) Within each metropolitan area of the State, the long-range statewide transportation plan shall be developed in cooperation with the affected MPOs.

(g) For non-metropolitan areas, the long-range statewide transportation plan shall be developed in consultation with affected non-metropolitan officials with responsibility for transportation using the State's consultation process(es) established under § 450.210(b).

(h) For each area of the State under the jurisdiction of an Indian Tribal government, the long-range statewide transportation plan shall be developed in consultation with the Tribal government and the Secretary of the Interior consistent with § 450.210(c).

(i) The long-range statewide transportation plan shall be developed, as appropriate, in consultation with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. This consultation shall involve comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(j) A long-range statewide transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by implementation of the plan. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The State may establish reasonable timeframes for performing this consultation. Additional information on linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part.

(k) In developing and updating the long-range statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall, to the maximum extent practicable, utilize the public involvement process described under § 450.210(a).

(l) The long-range statewide transportation plan may include a financial plan that demonstrates how the adopted long-range statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted long-range statewide transportation plan if additional resources beyond those identified in the financial plan were available.

(m) The State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (k) of this section.

(n) The long-range statewide transportation plan shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.210(a).

(o) The State shall continually evaluate, revise, and periodically update the long-range statewide transportation plan, as appropriate, using the procedures in this section for development and establishment of the long-range statewide transportation plan.

(p) Copies of any new or revised long-range statewide transportation plan documents shall be provided to the FHWA and the FTA for informational purposes.

**§ 450.216 Development and content of the statewide transportation improvement program (STIP).**

(a) The State shall develop a statewide transportation improvement program (STIP) for all areas of the State. The STIP shall cover a period of not less than four years and be updated at least every four years, or more frequently if the Governor elects a more frequent update cycle. If the STIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational. In case of difficulties developing a portion of the STIP for a particular area (e.g., metropolitan planning area, nonattainment or maintenance area, or Indian Tribal lands), a partial STIP covering the rest of the State may be developed.

(b) For each metropolitan area in the State, the STIP shall be developed in cooperation with the MPO designated for the metropolitan area. Each metropolitan transportation improvement program (TIP) shall be included without change in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor. A metropolitan TIP in a nonattainment or maintenance area is subject to an FHWA/FTA conformity finding before inclusion in the STIP. In areas outside a metropolitan planning area but within an air quality nonattainment or maintenance area containing any part of a metropolitan area, projects must be consistent with the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP.

(c) For each non-metropolitan area in the State, the STIP shall be developed in consultation with affected non-metropolitan local officials with responsibility for transportation using the State's consultation process(es) established under § 450.210.

(d) For each area of the State under the jurisdiction of an Indian Tribal government, the STIP shall be developed in consultation with the Tribal government and the Secretary of the Interior.

(e) Federal Lands Highway program TIPs shall be included without change in the STIP, directly or by reference, once approved by the FHWA pursuant to 23 U.S.C. 204(a) or (j).

(f) The Governor shall provide all interested parties with a reasonable opportunity to comment on the proposed STIP as required by § 450.210(a).

(g) The STIP shall include federally supported capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the State proposed for funding under title 23, U.S.C., and title 49, U.S.C., Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), but excluding:

(1) Safety projects funded under 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the State's discretion, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(h) The STIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with 23 U.S.C., Chapters 1 and 2 or title 49, U.S.C., Chapter 53 funds (*e.g.*, addition of an interchange to the Interstate System with State, local, and/or private funds, and congressionally designated projects not funded under title 23, U.S.C., or title 49, U.S.C., Chapter 53). For informational purposes, the STIP should include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. In addition, the STIP should include, for informational purposes (if appropriate and included in any TIPs), all regionally significant projects to be funded with non-Federal funds.

(i) The STIP shall include for each project or phase (*e.g.*, preliminary engineering, environment/NEPA, right-of-way, design, or construction) the following:

(1) Sufficient descriptive material (*i.e.*, type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost, or a project cost range, which may extend beyond the four years of the STIP;

(3) The amount of funds proposed to be obligated during each program year for the project or phase, by sources of Federal and non-Federal funds; and

(4) Identification of the agencies responsible for carrying out the project or phase.

(j) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, classifications must be consistent with the ''exempt project'' classifications contained in the EPA's transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23, U.S.C., Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the STIP.

(k) Each project or project phase included in the STIP shall be consistent with the long-range statewide transportation plan developed under § 450.214 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under § 450.322.

(l) The STIP may include a financial plan that demonstrates how the approved STIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the STIP, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the FHWA and the FTA on the STIP. Additional criteria for STIP financial constraint and financial plans that support the STIP are contained in Appendix B to this part.

(m) The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first two years of the STIP shall be limited to those for which funds are available or committed. Financial constraint of the STIP shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, by source, and which projects are to be implemented using proposed revenue sources while the entire transportation system is being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified, preferably in the financial plan consistent with paragraph (l) of this section.

(n) In areas outside a metropolitan planning area but inside a nonattainment or maintenance area that contains any part of a metropolitan area, projects must be consistent with the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP.

(o) Projects in any of the first four years of the STIP may be advanced in place of another project in the first four

years of the STIP, subject to the project selection requirements of § 450.220. In addition, the STIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the STIP development procedures established in this section, as well as the procedures for participation by interested parties (see § 450.210(a)), subject to FHWA/FTA approval (see § 450.218). All changes that affect fiscal constraint must take place by amendment of the STIP.

**§ 450.218 Self-certifications, Federal findings, and Federal approvals.**

(a) At least every four years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. STIP amendments shall also be submitted for joint approval. At the time the entire proposed STIP is submitted to the FHWA and the FTA for joint approval, the State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1), 49 CFR part 21, and 23 CFR parts 200 and 300;

(3) Section 1101(b) of the SAFETEA–LU (Pub. L. 109–59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(4) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(5) In States containing nonattainment and maintenance areas, sections 174 and 176(c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506(c) and (d)) and 40 CFR part 93;

(6) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(7) Section 324 of title 23, U.S.C., regarding the prohibition of discrimination based on gender; and

(8) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 35 regarding discrimination against individuals with disabilities.

(b) The FHWA and the FTA shall review the STIP at least every four years, or at the time the amended STIP is submitted, (based on self-certifications and appropriate reviews established and conducted by the FHWA and the FTA) and make a joint finding on the extent to which the projects in the STIP are based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and subparts A, B, and C of this part. Approval of the STIP by the FHWA and the FTA, in its entirety or in part, will be based upon the results of this joint finding.

(1) If the FHWA and the FTA determine that the STIP or amended STIP are based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part, the FHWA and the FTA may jointly:

(i) Approve the entire STIP;

(ii) Approve the STIP subject to certain corrective actions being taken; or

(iii) Under special circumstances, approve a partial STIP covering only a portion of the State.

(2) If the FHWA and the FTA jointly determine and document in the planning finding that a submitted STIP or amended STIP does not substantially meet the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part for any identified categories of projects, the FHWA and the FTA will not approve the STIP.

(c) The approval period for a new or amended STIP shall not exceed four years. If a State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new or amended STIP, the FHWA and the FTA will consider and take appropriate action on a request to extend the approval beyond four years for all or part of the STIP for a period not to exceed 180 days. In these cases, priority consideration will be given to projects and strategies involving the operation and management of the multimodal transportation system. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request. If the delay was due to the development and approval of a metropolitan TIP(s), the affected MPO(s) must provide supporting information, in writing, for the request.

(d) Where necessary in order to maintain or establish transit operations, the FHWA and/or the FTA may approve operating assistance for specific projects or programs funded under 49 U.S.C. 5307, 5311, 5316, and 5317, even though the projects or programs may not be included in an approved STIP.

**§ 450.220 Project selection from the STIP.**

(a) Except as provided in § 450.216(g) and § 450.218(d), only projects in a FHWA/FTA approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects proposed for funds administered by the FHWA or the FTA shall be selected from the approved TIP/STIP in accordance with procedures established pursuant to the project selection portion of subpart C of this part.

(c) In non-metropolitan areas, transportation projects undertaken on the National Highway System, under the Bridge and Interstate Maintenance programs in title 23, U.S.C., and under sections 5310, 5311, 5316, and 5317 of title 49, U.S.C., Chapter 53 shall be selected from the approved STIP by the State in consultation with the affected non-metropolitan local officials with responsibility for transportation.

(d) Federal Lands Highway program projects shall be selected from the approved STIP in accordance with the procedures developed pursuant to 23 U.S.C. 204.

(e) The projects in the first year of an approved STIP shall constitute an ''agreed to'' list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) through (d) of this section is required for the implementing agency to proceed with these projects. If Federal funds available are significantly less than the authorized amounts, or where there are significant shifting of projects between years, § 450.330(a) provides for a revised list of ''agreed to'' projects to be developed upon the request of the State, MPO, or public transportation operator(s). If an implementing agency wishes to proceed with a project in the second, third, or fourth year of the STIP, the procedures in paragraphs (b) through (d) of this section or expedited procedures that provide for the advancement of projects from the second, third, or fourth years of the STIP may be used, if agreed to by all parties involved in the selection process.

**§ 450.222 Applicability of NEPA to statewide transportation plans and programs.**

Any decision by the FHWA and the FTA concerning a long-range statewide transportation plan or STIP developed through the processes provided for in 23 U.S.C. 135 and 49 U.S.C. 5304 shall not be considered to be a Federal action subject to review under NEPA.

**§ 450.224 Phase-in of new requirements.**

(a) Prior to July 1, 2007, long-range statewide transportation plans and STIPs under development since August 10, 2005, may be completed under

TEA–21 requirements. Long-range statewide transportation plans and STIPs may also reflect the provisions of this part prior to July 1, 2007, but cannot take advantage of the extended update cycles (*e.g.*, four years for STIPs) until all provisions and requirements of this part are reflected in the long-range statewide transportation plan and STIP.

(b) For STIPs that are developed under TEA–21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, conformity determinations and STIP approvals) must be completed no later than June 30, 2007. For long-range statewide transportation plans that are completed under TEA–21 requirements prior to July 1, 2007, the State adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the long-range statewide transportation plan or the STIP were developed.

(c) In addition, the applicable action (see paragraph (b) of this section) on any amendments or updates to STIPs or long-range statewide transportation plans on or after July 1, 2007, shall be based on the provisions and requirements of this part.

## Subpart C—Metropolitan Transportation Planning and Programming

### § 450.300 Purpose.

The purposes of this subpart are to implement the provisions of 23 U.S.C. 134 and 49 U.S.C. 5303, as amended, which: (1) Sets forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process, including the development of a metropolitan transportation plan and a transportation improvement program (TIP), that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and (2) encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

### § 450.302 Applicability.

The provisions of this subpart are applicable to organizations and entities responsible for the transportation planning and programming processes in metropolitan planning areas.

### § 450.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

### § 450.306 Scope of the metropolitan transportation planning process.

(a) The metropolitan transportation planning process shall be continuous, cooperative, and comprehensive, and provide for consideration and implementation of projects, strategies, and services that will address the following factors:

(1) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for all motorized and non-motorized users;

(3) Increase the ability of the transportation system to support homeland security and to safeguard the personal security of all motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(7) Promote efficient system management and operation; and

(8) Emphasize the preservation of the existing transportation system.

(b) Consideration of the planning factors in paragraph (a) of this section should be reflected, as appropriate, in all aspects of the metropolitan transportation planning process, including activities such as the formulation of goals, objectives, performance measures, and evaluation criteria for use in developing the metropolitan transportation plan; identification of prioritization criteria for projects and strategies reflected in the TIP; and development of short-range planning studies, strategic planning and/or policy studies, or transportation needs studies.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or the certification of a metropolitan transportation planning process.

(d) The metropolitan transportation planning process shall be carried out in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(e) In carrying out the metropolitan transportation planning process, MPOs, States, and public transportation operators are encouraged to apply asset management principles and techniques in establishing planning goals, defining TIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance, as well as strategies and policies to support homeland security and to safeguard the personal security of all motorized and non-motorized users.

(f) The metropolitan transportation planning process shall be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) The metropolitan transportation planning process should be consistent with the development of Coordinated Public Transit-Human Services Transportation Plans, as required by 49 U.S.C. 5310, 5316, and 5317.

(h) The metropolitan transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and the Regional Transit Security Strategy, as required by the Department of Homeland Security.

(i) The FHWA and the FTA shall designate as a transportation management area (TMA) each urbanized area with a population of over 200,000 individuals, as defined by the Bureau of the Census. The FHWA and the FTA shall also designate any additional urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(j) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and these regulations, taking into account

the complexity of the transportation problems in the area. The simplified procedures shall be developed by the MPO in cooperation with the State(s) and public transportation operator(s).

**§ 450.308 Funding for transportation planning and unified planning work programs.**

(a) Funds provided under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), 49 U.S.C. 5307, and 49 U.S.C. 5339 are available to MPOs to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (b)(3) and 23 U.S.C. 105 may also be provided to MPOs for metropolitan transportation planning. In addition, an MPO serving an urbanized area with a population over 200,000, as designated by the Bureau of the Census, may at its discretion use funds sub-allocated under 23 U.S.C. 133(d)(3)(E) for metropolitan transportation planning activities.

(b) Metropolitan transportation planning activities performed with funds provided under title 23, U.S.C. and title 49, U.S.C., Chapter 53 shall be documented in a unified planning work program (UPWP) or simplified statement of work in accordance with the provisions of this section and 23 CFR part 420.

(c) Except as provided in paragraph (d) of this section, each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next one or two-year period by major activity and task (including activities that address the planning factors in § 450.306(a)), in sufficient detail to indicate who (*e.g.*, MPO, State, public transportation operator, local government, or consultant) will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

(d) With the prior approval of the State and the FHWA and the FTA, an MPO in an area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State(s) and the public transportation operator(s), in lieu of a UPWP. A simplified statement of work would include a description of the major activities to be performed during the next one- or two-year period, who (*e.g.*, State, MPO, public transportation operator, local government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State's planning work program, in accordance with 23 CFR part 420.

(e) Arrangements may be made with the FHWA and the FTA to combine the UPWP or simplified statement of work with the work program(s) for other Federal planning funds.

(f) Administrative requirements for UPWPs and simplified statements of work are contained in 23 CFR part 420 and FTA Circular C8100.1B (Program Guidance and Application Instructions for Metropolitan Planning Grants).

**§ 450.310 Metropolitan planning organization designation and redesignation.**

(a) To carry out the metropolitan transportation planning process under this subpart, a metropolitan planning organization (MPO) shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census).

(b) MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(c) An MPO should be designated, to the extent possible, under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out transportation planning for the entire area that it serves.

(d) When an MPO that serves a TMA is designated or redesignated, the MPO shall include local elected officials, officials of agencies that administer or operate major modes of transportation, and appropriate State transportation officials.

(e) To the extent possible, only one MPO should be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO may be designated to serve an urbanized area only if the Governor(s) and the existing MPO, if applicable, determine that the size and complexity of the urbanized area make designation of more than one MPO appropriate. In those cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official, written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among the MPOs.

(f) Nothing in this subpart shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to develop the metropolitan transportation plan and TIP for adoption by the MPO, or to develop long-range capital plans, coordinate transit services, and projects and carry out other activities pursuant to State law.

(g) Nothing in this subpart shall be deemed to prohibit an MPO from utilizing the staff resources of other agencies to carry out selected elements of the metropolitan transportation planning process.

(h) An MPO designation shall remain in effect until an official redesignation has been made in accordance with this section.

(i) An existing MPO may be redesignated only by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(j) Redesignation of an MPO serving a multi-State metropolitan planning area requires agreement between the Governors of each State served by the existing MPO and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(k) For the purposes of redesignation, units of general purpose local government may be defined as either:

(1) The local elected officials currently serving on the MPO; or

(2) The elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(l) Redesignation of an MPO is required whenever the existing MPO determines that:

(1) There is a substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or

(2) There is a substantial change in the decisionmaking authority or responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws.

(m) The following changes to an MPO do not require a redesignation:

(1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;

(2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;

(3) Adding members to satisfy the specific membership requirements for an MPO that serves a TMA; or

(4) Periodic rotation of members representing units of general-purpose local government, as established under MPO by-laws.

**§ 450.312 Metropolitan planning area boundaries.**

(a) The boundaries of a metropolitan planning area (MPA) shall be determined by agreement between the MPO and the Governor. At a minimum, the MPA boundaries shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) If any of the urbanized area(s) served by the MPO lie within a nonattainment or maintenance area for ozone, carbon monoxide, or particulate matter as designated under the Clean Air Act (42 U.S.C. 7401 *et seq.*) as of August 10, 2005, the MPA boundaries in existence at that time shall be retained. However, the MPA boundaries may be adjusted by agreement of the Governor and affected MPOs to encompass the entire nonattainment or maintenance area by agreement of the Governor.

(c) An MPA boundary may encompass more than one urbanized area.

(d) The MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate area.

(g) The MPA boundaries shall not overlap with each other.

(h) Where part of an urbanized area served by one MPO extends into an adjacent MPA, the MPOs shall, at a minimum, establish written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among and between the MPOs. Alternatively, the MPOs may adjust their existing boundaries so that the entire urbanized area lies within only one MPA. Boundary adjustments that significantly change the composition of the MPO may require redesignation of one or more such MPOs.

(i) The MPA boundaries shall be reviewed after each Census by the MPO (in cooperation with the State and public transportation operator(s)) to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall be adjusted as necessary. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by modal systems, and promotes efficient overall transportation investment strategies.

(j) Following MPA boundary approval by the MPO and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

**§ 450.314 Metropolitan planning agreements.**

(a) The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in a written agreement among the MPO, the State(s), and the public transportation operator(s) serving the MPA.

(1) The written agreement shall include specific provisions for cooperatively developing and sharing information related to the development of financial plans that support the metropolitan transportation plan (*see* § 450.322) and the metropolitan TIP (*see* § 450.324) and development of the annual listing of obligated projects (*see* § 450.332).

(2) The written agreement should include provisions for consulting with officials responsible for other types of planning affected by transportation, including State and local planned growth, economic development, environmental protection, airport operations, freight movements, safety/security operations, and providers of non-emergency transportation services receiving financial assistance from a source other than title 49, U.S.C., Chapter 53 that may include (as appropriate) transportation planning products or milestones representing consultation opportunities and/or periodic review of the various consultation mechanisms.

(b) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity rule (40 CFR part 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(c) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) If more than one MPO has been designated to serve an urbanized area, there shall be a written agreement between the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a proposed transportation investment extends across the boundaries of more than one MPA. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. The

metropolitan transportation planning processes for affected MPOs should, to the maximum extent possible, reflect coordinated data collection, analysis, and planning assumptions across the MPAs. Alternatively, a single metropolitan transportation plan and/or TIP for the entire urbanized area may be developed jointly by the MPOs in cooperation with their respective planning partners. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(e) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(f) If part of an urbanized area that has been designated as a TMA overlaps into an adjacent MPA that does not primarily serve a TMA, the entire adjacent urbanized area is not necessarily considered a TMA. However, at a minimum, there shall be a written agreement between the State(s), the MPOs, and the public transportation operator(s) describing how specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection) will be met for the overlapping part of the urbanized area contained in the TMA.

**§ 450.316 Interested parties, participation, and consultation.**

(a) The MPO shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, agencies or entities responsible for safety/security operations, providers of non-emergency transportation services receiving financial assistance from a source other than title 49, U.S.C, Chapter 53, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The participation plan shall be developed by the MPO in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

(i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice and reasonable access to information about transportation issues and processes;

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

(vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was initially made available for public comment;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93), a summary, analysis, and report on the disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO shall consult, as appropriate, with agencies and officials responsible for other planning activities within the MPA that are affected by transportation. To coordinate the planning functions to the maximum extent practicable, such consultation shall compare metropolitan transportation plans and TIPs, as they are developed, with the plans, maps, inventories, and planning documents developed by other agencies. This consultation shall include, as appropriate, contacts with State, local, Indian Tribal, and private agencies responsible for planned growth, economic development, environmental protection, airport operations, freight movements, land use management, natural resources, conservation, and historic preservation. In addition, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49, U.S.C., Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 204.

(c) When the MPA includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) The MPOs are encouraged to develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in paragraphs (b), (c), and (d) of this section, which may be included in the agreement(s) developed under § 450.314.

**§ 450.318 Transportation planning studies and project development.**

(a) The MPO, State, and/or public transportation operator may undertake a corridor or subarea planning study as part of the metropolitan transportation planning process. The results of these transportation planning studies may be incorporated into the overall project development process to the extent that they meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies may be used to produce any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (*i.e.*, highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Description of the affected environment; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents produced by, or in support of, the transportation planning process described in this subpart may be incorporated by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, to the extent that:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The corridor or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Continual opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment and other means of incorporation by reference that the NEPA lead agencies deem appropriate. Additional details on linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part.

**§ 450.320 Congestion management process in transportation management areas.**

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23, U.S.C., and title 49, U.S.C., Chapter 53 through the use of travel demand reduction and operational management strategies.

(b) The development of a congestion management process should result in multimodal system performance measures and strategies that can be reflected in the metropolitan transportation plan and the TIP. The level of system performance deemed acceptable by State and local transportation officials may vary by type of transportation facility, geographic location (metropolitan area or subarea), and/or time of day. In addition, consideration should be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity and safety of those lanes.

(c) The congestion management process shall be developed, established, and implemented as part of the metropolitan transportation planning process that includes coordination with transportation system management and operations activities. The congestion management process shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the causes of recurring and non-recurring congestion, identify and evaluate alternative strategies, provide information supporting the implementation of actions, and evaluate the effectiveness of implemented actions;

(2) Definition of congestion management objectives and appropriate performance measures to assess the extent of congestion and support the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures should be tailored to the specific needs of the area and established cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area;

(3) Establishment of a coordinated program for data collection and system performance monitoring to define the extent and duration of congestion, to contribute in determining the causes of congestion, and evaluate the efficiency and effectiveness of implemented actions. To the extent possible, this data collection program should be coordinated with existing data sources (including archived operational/ITS data) and coordinated with operations managers in the metropolitan area;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate congestion management strategies that will contribute to the more effective use and improved safety of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, are some examples of what should be appropriately considered for each area:

(i) Demand management measures, including growth management and congestion pricing;

(ii) Traffic operational improvements;

(iii) Public transportation improvements;

(iv) ITS technologies as related to the regional ITS architecture; and

(v) Where necessary, additional system capacity;

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this evaluation shall be provided to decisionmakers and the public to provide guidance on selection of effective strategies for future implementation.

(d) In a TMA designated as nonattainment area for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed for any project that will result in a significant increase in the carrying capacity for SOVs (i.e., a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks), unless the project is addressed through a congestion management process meeting the requirements of this section.

(e) In nonattainment and maintenance area TMAs, the congestion management process shall provide an appropriate analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the congestion management process shall identify all reasonable strategies to manage the SOV facility safely and effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall also be identified through the congestion management process. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(f) State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process, if the FHWA and the FTA find that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of 23 U.S.C. 134 and 49 U.S.C. 5303.

**§ 450.322 Development and content of the metropolitan transportation plan.**

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a 20-year planning horizon as of the effective date. In nonattainment and maintenance areas, the effective date of the transportation plan shall be the date of a conformity determination issued by the FHWA and the FTA. In attainment areas, the effective date of the transportation plan shall be its date of adoption by the MPO.

(b) The transportation plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand.

(c) The MPO shall review and update the transportation plan at least every four years in air quality nonattainment and maintenance areas and at least every five years in attainment areas to confirm the transportation plan's validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period to at least a 20-year planning horizon. In addition, the MPO may revise the transportation plan at any time using the procedures in this section without a requirement to extend the horizon year. The transportation plan (and any revisions) shall be approved by the MPO and submitted for information purposes to the Governor. Copies of any updated or revised transportation plans must be provided to the FHWA and the FTA.

(d) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the State air quality agency shall coordinate the development of the transportation control measures (TCMs) in a State Implementation Plan (SIP) with the MPO. For TCM substitutions or additions made under section 176(c)(8) of the Clean Air Act (42 U.S.C. 7506(c)(8)), the MPO, State air quality agency, and the EPA must concur on the equivalency of any substitute TCMs and the addition of new TCMs to the SIP.

(e) The transportation plan update process shall include a mechanism for ensuring that the MPO, the State(s), and the public transportation operator(s) agree that the data utilized in preparing other existing modal plans providing input to the transportation plan are valid. In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. The MPO shall approve transportation plan contents and supporting analyses produced by a transportation plan update.

(f) The metropolitan transportation plan shall, at a minimum, include:

(1) The projected transportation demand of persons and goods in the metropolitan planning area over the period of the transportation plan;

(2) Existing and proposed transportation facilities (including major roadways, transit, multimodal and intermodal facilities, pedestrian walkways and bicycle facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan. In addition, the locally preferred alternative selected from an Alternatives Analysis under the FTA's Capital Investment Grant program (49 U.S.C. 5309 and 49 CFR part 611) needs to be adopted as part of the metropolitan transportation plan as a condition for funding under 49 U.S.C. 5309;

(3) Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

(4) Consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for carbon monoxide or ozone;

(5) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs;

(6) Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in nonattainment and maintenance areas for conformity

determinations under the EPA's transportation conformity rule (40 CFR part 93). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) A discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;

(8) Pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(9) Transportation and transit enhancement activities, as appropriate; and

(10) A financial plan that demonstrates how the adopted transportation plan can be implemented, while operating and maintaining existing facilities and services. For the purpose of developing the transportation plan, the MPO, public transportation operator(s), and State shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation, as required under § 450.314(a)(1). All necessary financial resources from public and private sources that are reasonably expected to be made available to carry out the transportation plan shall be identified. The financial plan shall include recommendations on any additional financing strategies to fund projects and programs included in the metropolitan transportation plan. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies proposed for funding under title 23, U.S.C., title 49, U.S.C., Chapter 53, or with other Federal funds; State assistance; local sources; and private participation. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP. In addition, the financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were available. Additional criteria and information on financial plans that support metropolitan transportation plans are contained in Appendix B to this part.

(g) The MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan. The consultation shall involve, as appropriate:

(1) Comparison of transportation plans with State conservation plans or maps, if available; or

(2) Comparison of transportation plans to inventories of natural or historic resources, if available.

(h) The metropolitan transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects for the MPA contained in the Strategic Highway Safety Plan required under 23 U.S.C. 148, as well as (as appropriate) emergency relief and disaster preparedness plans and strategies and policies that support homeland security and safeguard the personal security of all motorized and non-motorized users.

(i) The MPO shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(j) The metropolitan transportation plan shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(k) A State or MPO shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(9) of this section.

(l) In nonattainment and maintenance areas for transportation-related pollutants, the MPO, as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93). During a conformity lapse, MPOs can prepare an interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation. An interim metropolitan transportation plan containing eligible projects that are not from the most recent conforming transportation plan and TIP must meet all the requirements of this section.

**§ 450.324 Development and content of the transportation improvement program (TIP).**

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall cover a period of not less than four years, be updated at least every four years, and be approved by the MPO and the Governor. If the TIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational. The TIP may be updated more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or revised TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93).

(b) The MPO shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the TIP shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall include federally supported capital and non-capital surface transportation projects (or phases of projects) within the

boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49, U.S.C., Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), but excluding:

(1) Safety projects funded under 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the discretion of the State and MPO, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(d) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23, U.S.C., Chapters 1 and 2 or title 49, U.S.C., Chapter 53 (*e.g.*, addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally designated projects not funded under 23 U.S.C. or 49 U.S.C., Chapter 53). For public information and conformity purposes, the TIP should include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(e) The TIP shall include, for each project or phase (*e.g.*, preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

(1) Sufficient descriptive material (*i.e.*, type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost, which may extend beyond the four years of the TIP;

(3) The amount of funds proposed to be obligated during each program year for the project or phase (by category and source);

(4) Identification of the agencies responsible for carrying out the project or phase;

(5) In nonattainment and maintenance areas, identification of those projects which are identified as TCMs in the applicable SIP;

(6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulation (40 CFR part 93); and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(f) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, classifications must be consistent with the ''exempt project'' classifications contained in the EPA transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23, U.S.C., Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the TIP.

(g) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(h) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO, State(s), and public transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation, in accordance with § 450.314(a)(1). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., title 49, U.S.C., Chapter 53, and other Federal funds; regionally significant projects that are not Federally funded; and operation and maintenance of the existing system. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan and TIP if reasonable additional resources beyond those identified in the financial plan were available. Additional criteria and information on financial plans that support the TIP are contained in Appendix B to this part.

(i) The TIP shall include a project, or a phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first two years of the TIP shall be limited to those for which funds are available or committed. The TIP financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, by source, and which projects are to be implemented using proposed revenue sources while the entire transportation system is being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. Additional information on TIP financial constraint and the financial plan that supports the TIP are contained in appendix B of this part. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulation (40 CFR part 93) and shall provide for their timely implementation.

(j) As a management tool for monitoring progress in implementing the transportation plan, the TIP should:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects; and

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(k) During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a lapse (as defined in 40 CFR part 93). An interim TIP consisting of eligible projects from the most recent conforming metropolitan transportation plan and TIP may

proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(l) Projects in any of the first four years of the TIP may be advanced in place of another project in the first four years of the TIP, subject to the project selection requirements of § 450.330. In addition, the TIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO participation plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.328).

**§ 450.326 TIP revisions and relationship to the STIP.**

(a) An MPO may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if the TIP is amended by adding or deleting non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. Public participation procedures consistent with § 450.316(b) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications that only involve projects of the type covered in § 450.324(f).

(b) After approval by the MPO and the Governor, the TIP shall be included without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, a conformity finding on the TIP must be made by the FHWA and the FTA before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO and Federal land management agencies when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

**§ 450.328 TIP action by the FHWA and the FTA.**

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP, including amendments thereto, is consistent with the metropolitan transportation plan produced by the continuing, comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under § 450.334, a review of the metropolitan transportation plan by the FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the MPO, as well as the FHWA and the FTA, shall determine conformity of any updated or amended TIP , in accordance with 40 CFR part 93. After the FHWA and the FTA issue a conformity determination on the TIP, the TIP shall be incorporated, without change, into the STIP, directly or by reference.

(c) If the metropolitan transportation plan has not been updated in accordance with the cycles defined in § 450.322(c), projects may only be advanced from a previously approved TIP in attainment areas or a previously conforming TIP in nonattainment and maintenance areas. Until the MPO approves (in attainment areas) or the FHWA/FTA issues a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the TIP may not be amended.

(d) In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the TIP in accordance with § 450.216(e).

(e) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the financially constrained and conforming metropolitan transportation plan and TIP.

(f) Where necessary in order to maintain or establish operations, the FHWA and/or the FTA may approve transit operating assistance for specific projects or programs funded under 49 U.S.C. 5307, 5311, 5316, and 5317, even though the projects or programs may not be included in an approved TIP/STIP.

**§ 450.330 Project selection from the TIP.**

(a) Once a TIP that meets the requirements of 23 U.S.C. 134(j), 49 U.S.C. 5303(j), and § 450.324 has been developed and approved, the first year of the TIP shall constitute an ''agreed to'' list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts or where there are significant shifting of projects between years. In this case, a revised ''agreed to'' list of projects shall be jointly developed by the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s). If the State or public transportation operator(s) wishes to proceed with a project in the second, third, or fourth year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the public transportation operator(s) jointly develop expedited project selection procedures to provide for the advancement of projects from the second, third, or fourth years of the TIP.

(b) In metropolitan areas not designated as TMAs, projects to be implemented using title 23, U.S.C. funds (other than Federal Lands Highway program projects) or funds under title 49, U.S.C., Chapter 53, shall be selected by the State and/or the public transportation operator(s), in cooperation with the MPO from the approved metropolitan TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(c) In areas designated as TMAs, all 23 U.S.C. and 49 U.S.C., Chapter 53 funded projects (excluding projects on the National Highway System (NHS) and projects funded under the Bridge, Interstate Maintenance, and Federal Lands Highway programs) shall be selected by the MPO in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. Projects on the NHS and projects funded under the Bridge and Interstate Maintenance programs shall be selected by the State in cooperation with the MPO, from the approved TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(d) Except as provided in § 450.324(c) and § 450.328(f), projects not included in the federally approved STIP shall not be eligible for funding with funds under title 23, U.S.C., or 49 U.S.C., Chapter 53.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93).

**§ 450.332 Annual listing of obligated projects.**

(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the State program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C., Chapter 53 were obligated in the preceding program year.

(b) The listing shall be prepared in accordance with § 450.314(a)(1) and shall include all federally funded projects authorized or revised to increase obligations in the preceding program year, and shall at a minimum include the TIP information under § 450.324(e)(1) and (4) and identify, for each project, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining and available for subsequent years.

(c) The listing shall be published or otherwise made available in accordance with the MPO's public participation criteria for the TIP.

**§ 450.334 Self-certifications and Federal certifications.**

(a) For all MPAs, concurrent with the submittal of the entire proposed TIP to the FHWA and the FTA as part of the STIP approval, the State and the MPO shall certify at least every four years that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements including:

(1) 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;

(2) In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;

(3) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1), 49 CFR part 21, and 23 CFR part 230;

(4) Section 1101(b) of the SAFETEA–LU (Pub. L. 109–59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(5) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(6) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(7) Section 324 of title 23, U.S.C., regarding the prohibition of discrimination based on gender; and

(8) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 35 regarding discrimination against individuals with disabilities.

(b) In TMAs, the FHWA and the FTA jointly shall review and evaluate the transportation planning process for each TMA no less than once every four years to determine if the process meets the requirements of applicable provisions of Federal law and this subpart.

(1) After review and evaluation of the TMA planning process, the FHWA and FTA shall take one of the following actions:

(i) If the process meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process;

(ii) If the process substantially meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(iii) If the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the FHWA and the FTA jointly determine, subject to certain specified corrective actions being taken.

(2) If, upon the review and evaluation conducted under paragraph (b)(1)(iii) of this section, the FHWA and the FTA do not certify the transportation planning process in a TMA, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under title 23, U.S.C., and title 49, U.S.C., Chapter 53, in addition to corrective actions and funding restrictions. The withheld funds shall be restored to the MPA when the metropolitan transportation planning process is certified by the FHWA and FTA, unless the funds have lapsed.

(3) A certification of the TMA planning process will remain in effect for four years unless a new certification determination is made sooner by the FHWA and the FTA or a shorter term is specified in the certification report.

(4) In conducting a certification review, the FHWA and the FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(5) The MPO(s), the State(s), and public transportation operator(s) shall be notified of the actions taken under paragraphs (b)(1) and (b)(2) of this section. The FHWA and the FTA will update the certification status of the TMA when evidence of satisfactory completion of a corrective action(s) is provided to the FHWA and the FTA.

**§ 450.336 Applicability of NEPA to metropolitan transportation plans and programs.**

Any decision by the FHWA and the FTA concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134 and 49 U.S.C. 5303 shall not be considered to be a Federal action subject to review under NEPA.

**§ 450.338 Phase-in of new requirements.**

(a) Prior to July 1, 2007, metropolitan transportation plans and TIPs under development since August 10, 2005, may be completed under TEA–21 requirements. Metropolitan transportation plans and TIPs may also reflect the provisions of this part prior to July 1, 2007, but cannot take advantage of the extended update cycles (*e.g.*, four years for TIPs and four years for metropolitan transportation plans in nonattainment and maintenance areas) until all provisions and requirements of this part are reflected in the metropolitan transportation plan and TIP.

(b) For metropolitan transportation plans and TIPs that are developed under TEA–21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, conformity determinations and STIP approvals) must be completed no later than June 30, 2007. For metropolitan transportation plans in attainment areas that are developed under TEA–21 requirements prior to July 1, 2007, the MPO adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the metropolitan transportation plan or TIP were developed.

(c) In addition, the applicable action (see paragraph (b) of this section) on any amendments or updates to metropolitan transportation plans and TIPs on or after July 1, 2007, shall address the provisions and requirements of this part.

(d) For new TMAs, the congestion management process described in § 450.320 shall be implemented within 18 months of the designation of a new TMA.

## Appendix A to Part 450—Linking the Transportation Planning and NEPA Processes

### Background and Overview

For 40 years, the Congress has directed that federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306). Over the years, the Congress has refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environment and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted *de novo,* disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), planning-level corridor/subarea/feasibility studies, or FTA's planning Alternatives Analyses. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this Appendix is to change this culture, by supporting congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. This Appendix was crafted to recognize that transportation planning processes vary across the country. This document provides details on how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents under existing laws, regardless of when the Notice of Intent has been published. This Appendix presents environmental review as a continuum of sequential study, refinement, and expansion performed in transportation planning and during project development/NEPA, with information developed and conclusions drawn in early stages utilized in subsequent (and more detailed) review stages.

The information below is intended for use by State departments of transportation (State DOTs), metropolitan planning organizations (MPOs), and public transportation operators to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of this Appendix in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects.

This Appendix does not extend NEPA requirements to transportation plans and programs. The Transportation Efficiency Act for the 21st Century (TEA–21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) specifically exempted transportation plans and programs from NEPA review. Therefore, initiating the NEPA process as part of, or concurrently with, a transportation planning study does not subject transportation plans and programs to NEPA.

Implementation of this Appendix by States, MPOs, and public transportation operators is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development/NEPA processes will depend upon how well they meet certain standards established by NEPA regulations and guidance. While some transportation planning processes already meet these standards, others will need some modification.

The remainder of this Appendix document utilizes a ''Question and Answer'' format, organized into three primary categories (''Procedural,'' ''Substantive,'' and ''Administrative Issues'').

*I. Procedural*

1. In what format should the transportation planning information be included?

To be included in the NEPA process, work from the transportation planning process must be documented in a form that can be appended to the NEPA document or incorporated by reference. Documents may be incorporated by reference if they are readily available so as to not impede agency or public review of the action. Any document incorporated by reference must be ''reasonably available for inspection by potentially interested persons within the time allowed for comment.'' Incorporated materials must be cited in the NEPA document and their contents briefly described, so that the reader understands why the document is cited and knows where to look for further information. To the extent possible, the documentation should be in a form such as official actions by the MPO and/or correspondence within and among the organizations involved in the transportation planning process.

2. What is a reasonable level of detail for a planning product that is intended to be used in a NEPA document? How does this level of detail compare to what is considered a full NEPA analysis?

For purposes of transportation planning alone, a planning-level analysis does not need to rise to the level of detail required in the NEPA process. Rather, it needs to be accurate and up-to-date, and should adequately support recommended improvements in the statewide or metropolitan long-range transportation plan. The SAFETEA–LU requires transportation planning processes to focus on setting a context and following acceptable procedures. For example, the SAFETEA–LU requires a ''discussion of the types of potential environmental mitigation activities'' and potential areas for their implementation, rather than details on specific strategies. The SAFETEA–LU also emphasizes consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.

However, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) ultimately will be judged by the standards applicable under the NEPA regulations and guidance from the Council on Environmental Quality (CEQ). To the extent the information incorporated from the transportation planning process, standing alone, does not contain all of the information or analysis required by NEPA, then it will need to be supplemented by other information contained in the EIS or EA that would, in conjunction with the information from the plan, collectively meet the requirements of NEPA. The intent is not to require NEPA studies in the transportation planning process. As an option, the NEPA analyses prepared for project development can be integrated with transportation planning studies (see the response to Question 9 for additional information).

3. What type and extent of involvement from Federal, Tribal, State, and local environmental, regulatory, and resource agencies is needed in the transportation planning process in order for planning-level decisions to be more readily accepted in the NEPA process?

Sections 3005, 3006, and 6001 of the SAFETEA–LU established formal consultation requirements for MPOs and State DOTs to employ with environmental, regulatory, and resource agencies in the development of long-range transportation plans. For example, metropolitan transportation plans now ''shall include a discussion of the types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the [transportation] plan,'' and that these planning-level discussions ''shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.'' In addition, MPOs ''shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan,'' and that this consultation ''shall involve, as appropriate, comparison of transportation plans with State conservation plans or maps, if available, or comparison of transportation plans to inventories of natural or historic resources, if available.'' Similar SAFETEA–LU language addresses the development of the long-range statewide transportation plan, with the addition of Tribal conservation plans or maps to this planning-level ''comparison.''

In addition, section 6002 of the SAFETEA–LU established several mechanisms for increased efficiency in environmental reviews for project decision-making. For example, the term ''lead agency'' means the U. S. Department of Transportation and, if applicable, any State or local government entity serving as a joint lead agency for the

NEPA process. In addition, the lead agency is responsible for inviting and designating ''participating agencies'' (*i.e.,* other Federal or non-Federal agencies that may have an interest in the proposed project). Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency: (a) Has no jurisdiction or authority with respect to the project; (b) has no expertise or information relevant to the project; and (c) does not intend to submit comments on the project.

Past successful examples of using transportation planning products in NEPA analysis are based on early and continuous involvement of environmental, regulatory, and resource agencies. Without this early coordination, environmental, regulatory, and resource agencies are more likely to expect decisions made or analyses conducted in the transportation planning process to be revisited during the NEPA process. Early participation in transportation planning provides environmental, regulatory, and resource agencies better insight into the needs and objectives of the locality. Additionally, early participation provides an important opportunity for environmental, regulatory, and resource agency concerns to be identified and addressed early in the process, such as those related to permit applications. Moreover, Federal, Tribal, and State, and local environmental, regulatory, and resource agencies are able to share data on particular resources, which can play a critical role in determining the feasibility of a transportation solution with respect to environmental impacts. The use of other agency planning outputs can result in a transportation project that could support multiple goals (transportation, environmental, and community). Further, planning decisions by these other agencies may have impacts on long-range transportation plans and/or the STIP/TIP, thereby providing important input to the transportation planning process and advancing integrated decision-making.

Transportation planning products can provide watershed and landscape-level approaches to mitigation that address indirect and cumulative impacts, which must be considered under NEPA. Such broad scale approaches focus on the natural resources within a particular ecosystem or watershed and look at the most critical or high quality resources, rather than focusing narrowly on mitigating at the direct location of impact. Techniques have been developed to better avoid, minimize, and mitigate these impacts, as well as the impacts of past infrastructure projects, on a project-specific basis. However, the avoidance, minimization, and mitigation efforts used may not always provide the greatest environmental benefit, or may do very little to promote ecosystem sustainability. To address concern, the FHWA and seven other Federal agencies produced *Eco-Logical: An Ecosystem Approach to Developing Infrastructure Projects.* (See *http://environment.fhwa.dot.gov/ecological/ecological.pdf.*) Eco-Logical encourages Federal, State, tribal and local partners involved in infrastructure planning, design, review, and construction to use flexibility in regulatory processes. Employing available planning resources such as each State's Comprehensive Wildlife Conservation Strategy, *Eco-Logical* puts forth the conceptual groundwork for integrating plans across agency boundaries, and endorses ecosystem-based mitigation—an innovative method of mitigating infrastructure impacts that cannot be avoided.

The FHWA has emphasized that wetland and natural habitat mitigation measures, such as wetland and habitat banks or statewide and regional conservation measures, are eligible for Federal-aid participation when they are undertaken to create mitigation resources for future transportation projects. In its March 10, 2005, memorandum on Wetland and Natural Habitat Mitigation, the FHWA clarified that, to provide for wetland or other mitigation banks, the State DOT and the FHWA Division Office should identify potential future wetlands and habitat mitigation needs for a reasonable time frame and establish a need for the mitigation credits. The transportation planning process should guide the determination of future mitigation needs.'' (*See http://www.fhwa.dot.gov/environment/wetland/wethabmitmem.htm.*)

4. What is the procedure for using decisions or analyses from the transportation planning process?

The FHWA and the FTA, as the lead Federal agencies, will have the final say on what processes and consultation techniques are used to determine the transportation planning products that will be incorporated into the NEPA process. At a minimum, a robust scoping/early coordination process (which explains to Federal and State environmental, regulatory, and resource agencies and the public the information and/or analyses utilized to develop the planning products, how the purpose and need was developed and refined, and how the design concept and scope were determined) should play a critical role in leading to informed FHWA/FTA decisions on the suitability of the transportation planning information, analyses, documents, and decisions for use in the NEPA process. As part of a rigorous scoping/early coordination process, the FHWA and the FTA should ensure that the transportation planning results are appropriately documented, shared, and used.

5. To what extent can the FHWA/FTA provide up-front assurance that decisions and additional investments made in the transportation planning process will allow planning-level decisions and analyses to be used in the NEPA process?

There are no guarantees. However, the potential is greatly improved for transportation planning processes that address the ''3–C'' planning principles (comprehensive, cooperative, and continuous); incorporate the intent of NEPA through the consideration of natural, physical, and social effects; involve environmental, regulatory, and resource agencies; thoroughly document the transportation planning process information, analysis, and decision; and vet the planning results through the applicable public involvement processes.

6. What considerations will the FHWA/FTA take into account in their review of transportation planning products for acceptance in project development/NEPA?

The FHWA and the FTA will give deference to decisions resulting from the transportation planning process if the FHWA and FTA determine that the planning process is consistent with the ''3–C'' planning principles and when the planning study process, alternatives considered, and resulting decisions have a rational basis that is thoroughly documented and vetted through the applicable public involvement processes. Moreover, any applicable program-specific requirements (*e.g.,* the Congestion Mitigation and Air Quality Improvement Program or the FTA's Capital Investment Grant program) also must be met.

The NEPA requires that the FHWA and the FTA be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation plan are incorporated into the purpose and need statement for a NEPA document, the FHWA and the FTA should not revisit whether these are the best objectives or choices among other options. Rather, the FHWA and the FTA review would include making sure that objectives or choices derived from the transportation plan were: Based on transportation planning factors established by Federal law; reflect a credible and articulated planning rationale; founded on reliable data; and developed through transportation planning processes meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the goals and choices must be documented and included in the NEPA document. The FHWA/FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable, scientifically acceptable, and consistent with goals, objectives, and policies set forth in long-range transportation plans. This review would include determining whether: (a) Assumptions have a rational basis and are up-to-date and (b) data, analytical methods, and modeling techniques are reliable, defensible, reasonably current, and meet data quality requirements.

*II. Substantive*

*General Issues To Be Considered*

7. What should be considered in order to rely upon transportation planning studies in NEPA?

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a ''checklist,'' these questions are intended to

guide the practitioner's analysis of the planning products:

- How much time has passed since the planning studies and corresponding decisions were made?
- Were the future year policy assumptions used in the NEPA study related to land use, economic development, transportation costs, and network expansion consistent with those developed and used in the transportation planning process?
- Is the information still relevant/valid?
- What changes have occurred in the area since the study was completed?
- Is the information in a format that can be appended to an environmental document or reformatted to do so?
- Are the analyses in a planning-level report or document based on data, analytical methods, and modeling techniques that are reliable, defensible, and consistent with that used in other regional transportation studies and project development activities?
- Were the FHWA and FTA, other agencies, and the public involved in the relevant planning analysis and the corresponding planning decisions?
- Were the planning products available to other agencies at NEPA scoping?
- At NEPA scoping, was a clear connection between the decisions made in planning and those to be made during the project development stage explained to the public and others? What was the response?
- Are natural resource and land use plans being informed by transportation planning products, and vice versa?

*Purpose and Need*

8. How can transportation planning be used to shape a project's purpose and need in the NEPA process?

A sound transportation planning process is the primary source of the project purpose and need. Through transportation planning, State and local governments, with involvement of stakeholders and the public, establish a vision for the region's future transportation system, define transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these issues. The transportation planning process also provides a potential forum to define a project's purpose and need by framing the scope of the problem to be addressed by a proposed project. This scope may be further refined during the transportation planning process as more information about the transportation need is collected and consultation with the public and other stakeholders clarifies other issues and goals for the region.

Section 6002 of the SAFETEA–LU also provided additional focus regarding the definition of the purpose and need and objectives. For example, the lead agency, as early as practicable during the environmental review process, shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project. The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include: (a) Achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan; (b) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or Tribal plans; and (c) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

The transportation planning process can be utilized to develop the purpose and need in the following ways:

(a) Goals and objectives from the transportation planning process may be part of the project's purpose and need statement;

(b) A general travel corridor or general mode or modes (i.e., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;

(c) If the financial plan for a metropolitan transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or

(d) The results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained in the NEPA document.

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

Short of a fully integrated transportation decisionmaking process, many State DOTs develop information for their purpose and need statements when implementing interagency NEPA/Section 404 process merger agreements. These agreements may need to be expanded to include commitments to share and utilize transportation planning products when developing a project's purpose and need.

9. Under what conditions can the NEPA process be initiated in conjunction with transportation planning studies?

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the ''tiered EIS,'' in which general travel corridors, modes, and/or packages of projects are evaluated at a planning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a subsequent project or series of projects. The tiered EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in these decisions, as well as to ensure the appropriate consideration of environmental factors in these planning-level decisions.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the formal NEPA process could be initiated through publication of a NOI in conjunction with a corridor or subarea study. Similarly, some public transportation operators developing major capital projects perform the planning Alternatives Analysis required for funding under FTA's Capital Investment Grant program found in 49 U.S.C. 5309(d) and (e) within the NEPA process and combine the planning Alternatives Analysis with the draft NEPA document.

*Alternatives*

10. In the context of this Appendix, what is the meaning of the term ''alternatives?''

This Appendix uses the term ''alternatives'' as specified in the NEPA regulations (40 CFR 1502.14), where it is defined in its broadest sense to include everything from major modal alternatives and location alternatives to minor design changes that would mitigate adverse impacts. This Appendix does not use the term as it is used in many other contexts (*e.g.*, ''prudent and feasible alternatives'' under Section 4(f) of the Department of Transportation Act, the ''Least Environmentally Damaging Practicable Alternative'' under the Clean Water Act, or the planning Alternatives Analysis in 49 U.S.C. 5309(d) and (e)).

However, as early as possible in the transportation planning stage of any project, a determination should be made as to whether the alternatives to be considered will need to be used to satisfy multiple statutory and regulatory requirements that will be addressed during the subsequent project development process as an integral part of the NEPA process. If so, during transportation planning, the alternatives chosen for consideration and the analysis of those alternatives should reflect the multiple objectives that must be addressed. For example, if a potential project would require a Section 404 permit, ideally there would be coordination with the U. S. Army Corps of Engineers (COE) and some level of agreement from the COE that the alternatives considered are broad enough to allow for the ultimate development of a Least Environmentally Damaging Practicable Alternative. In this case, screening of alternatives for the presence of important wetlands based on geographic information systems (GIS) or other planning-level data sources would be appropriate to support this early determination.

11. Under what circumstances can alternatives be eliminated from detailed consideration during the NEPA process based on information and analysis from the transportation planning process?

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: (a) Shaping the purpose and need for the project; or (b) evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to the start of the project-level NEPA process. Each approach requires careful attention, and is summarized below.

(a) *Shaping the Purpose and Need for the Project:* The transportation planning process

should shape the purpose and need and, thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process. See the response to Question 8 for further discussion on how the planning process can shape the purpose and need used in the NEPA process.

For example, the purpose and need may be shaped by the transportation planning process in a manner that consequently narrows the range of alternatives that must be considered in detail in the NEPA document when:

(1) The transportation planning process has selected a *general travel* corridor as best addressing identified transportation problems and the rationale for the determination in the planning document is reflected in the purpose and need statement of the subsequent NEPA document;

(2) The transportation planning process has selected a *general mode* (*i.e.*, highway, transit, or a highway/transit combination) that accomplishes its goals and objectives, and these documented determinations are reflected in the purpose and need statement of the subsequent NEPA document; or

(3) The transportation planning process determines that the project needs to be funded by *tolls or other non-traditional funding sources* in order for the long-range transportation plan to be fiscally constrained or identifies goals and objectives that can only be met by toll roads or other non-traditional funding sources, and that determination of those goals and objectives is reflected in the purpose and need statement of the subsequent NEPA document.

(b) *Evaluating and Eliminating Alternatives During the Transportation Planning Process:* The evaluation and elimination of alternatives during the transportation planning process can be incorporated by reference into a NEPA document under certain circumstances. In these cases, the planning study becomes part of the NEPA process and provides a basis for screening out alternatives. As with any part of the NEPA process, the analysis of alternatives to be incorporated from the process must have a rational basis that has been thoroughly documented (including documentation of the necessary and appropriate vetting through the applicable public involvement processes). This record should be made available for public review during the NEPA scoping process.

See responses to Questions 4, 5, 6, and 7 for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 12 on the information or analysis from the transportation planning process necessary for supporting the elimination of an alternative(s) from detailed consideration in the NEPA process.

For instance, under FTA's Capital Investment Grant program, the alternatives considered in the NEPA process may be narrowed in those instances that the planning Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a planning study prior to the NEPA review. In fact, the FTA may be able to narrow the alternatives considered in detail in the NEPA document to the No-Build (No Action) alternative and the Locally Preferred Alternative. Alternatives must meet the following criteria if they are deemed sufficiently considered by a planning Alternatives Analysis under FTA's Capital Investment Grant program conducted prior to NEPA without a programmatic NEPA analysis and documentation:

- During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts; capital and operating costs; social, economic, and environmental impacts; and technical considerations;
- There must be appropriate public involvement in the planning Alternatives Analysis;
- The appropriate Federal, State, and local environmental, regulatory, and resource agencies must be engaged in the planning Alternatives Analysis;
- The results of the planning Alternatives Analysis must be documented;
- The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and
- The subsequent NEPA document must include the evaluation of alternatives from the planning Alternatives Analysis.

The above criteria apply specifically to FTA's Capital Investment Grant process. However, for other transportation projects, if the planning process has included the analysis and stakeholder involvement that would be undertaken in a first tier NEPA process, then the alternatives screening conducted in the transportation planning process may be incorporated by reference, described, and relied upon in the project-level NEPA document. At that point, the project-level NEPA analysis can focus on the remaining alternatives.

12. What information or analysis from the transportation planning process is needed in an EA or EIS to support the elimination of an alternative(s) from detailed consideration?

The section of the EA or EIS that discusses alternatives considered but eliminated from detailed consideration should:

(a) Identify any alternatives eliminated during the transportation planning process (this could include broad categories of alternatives, as when a long-range transportation plan selects a general travel corridor based on a corridor study, thereby eliminating all alternatives along other alignments);

(b) Briefly summarize the reasons for eliminating the alternative; and

(c) Include a summary of the analysis process that supports the elimination of alternatives (the summary should reference the relevant sections or pages of the analysis or study) and incorporate it by reference or append it to the NEPA document.

Any analyses or studies used to eliminate alternatives from detailed consideration should be made available to the public and affected agencies during the NEPA scoping process and should be reasonably available during comment periods.

Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA ''purpose and need'' can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. Alternatives that remain ''reasonable'' after the planning-level analysis must be addressed in the EIS, even when they clearly are not the preferred alternative. When the proposed action evaluated in an EA involves unresolved conflicts concerning alternative uses of available resources, NEPA requires that appropriate alternatives be studied, developed, and described.

*Affected Environment and Environmental Consequences*

13. What types of planning products provide analysis of the affected environment and environmental consequences that are useful in a project-level NEPA analysis and document?

The following planning products are valuable inputs to the discussion of the affected environment and environmental consequences (both its current state and future state in the absence of the proposed action) in the project-level NEPA analysis and document:

- Regional development and growth analyses;
- Local land use, growth management, or development plans; and
- Population and employment projections.

The following are types of information, analysis, and other products from the transportation planning process that can be used in the discussion of the affected environment and environmental consequences in an EA or EIS:

(a) GIS overlays showing the past, current, or predicted future conditions of the natural and built environments;

(b) Environmental scans that identify environmental resources and environmentally sensitive areas;

(c) Descriptions of airsheds and watersheds;

(d) Demographic trends and forecasts;

(e) Projections of future land use, natural resource conservation areas, and development; and

(f) The outputs of natural resource planning efforts, such as wildlife conservation plans, watershed plans, and multiple species habitat conservation plans.

However, in most cases, the assessment of the affected environment and environmental consequences conducted during the transportation planning process will not be detailed enough to meet NEPA standards and, thus, the inventory and evaluation of affected resources and the analysis of consequences of the alternatives will need to be supplemented with more refined analysis and possibly site-specific details during the NEPA process.

14. What information from the transportation planning process is useful in describing a baseline for the NEPA analysis of indirect and cumulative impacts?

Because the nature of the transportation planning process is to look broadly at future

land use, development, population increases, and other growth factors, the planning analysis can provide the basis for the assessment of indirect and cumulative impacts required under NEPA. The consideration in the transportation planning process of development, growth, and consistency with local land use, growth management, or development plans, as well as population and employment projections, provides an overview of the multitude of factors in an area that are creating pressures not only on the transportation system, but on the natural ecosystem and important environmental and community resources. An analysis of all reasonably foreseeable actions in the area also should be a part of the transportation planning process. This planning-level information should be captured and utilized in the analysis of indirect and cumulative impacts during the NEPA process.

To be used in the analysis of indirect and cumulative impacts, such information should:

(a) Be sufficiently detailed that differences in consequences of alternatives can be readily identified;

(b) Be based on current data (e.g., data from the most recent Census) or be updated by additional information;

(c) Be based on reasonable assumptions that are clearly stated; and/or

(d) Rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

*Environmental Mitigation*

15. How can planning-level efforts best support advanced mitigation, banking, and priorities for environmental mitigation investments?

A lesson learned from efforts to establish mitigation banks and advance mitigation agreements and alternative mitigation options is the importance of beginning interagency discussions during the transportation planning process. Development pressures, habitat alteration, complicated real estate transactions, and competition for potential mitigation sites by public and private project proponents can encumber the already difficult task of mitigating for ''like'' value and function and reinforce the need to examine mitigation strategies as early as possible.

Robust use of remote sensing, GIS, and decision support systems for evaluating conservation strategies are all contributing to the advancement of natural resource and environmental planning. The outputs from environmental planning can now better inform transportation planning processes, including the development of mitigation strategies, so that transportation and conservation goals can be optimally met. For example, long-range transportation plans can be screened to assess the effect of general travel corridors or density, on the viability of sensitive plant and animal species or habitats. This type of screening provides a basis for early collaboration among transportation and environmental staffs, the public, and regulatory agencies to explore areas where impacts must be avoided and identify areas for mitigation investments. This can lead to mitigation strategies that are both more economical and more effective from an environmental stewardship perspective than traditional project-specific mitigation measures.

*III. Administrative Issues*

16. Are Federal funds eligible to pay for these additional, or more in depth, environmental studies in transportation planning?

Yes. For example, the following FHWA and FTA funds may be utilized for conducting environmental studies and analyses within transportation planning:

- FHWA planning and research funds, as defined under 23 CFR part 420 (*e.g.*, Metropolitan Planning (PL), Statewide Planning and Research (SPR), National Highway System (NHS), Surface Transportation Program (STP), and Equity Bonus); and
- FTA planning and research funds (49 U.S.C. 5303 and 49 U.S.C. 5313(b)), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) Conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (*e.g.*, wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation plans and programs under 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be funded through the program category for which the ultimate project qualifies (*e.g.*, NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA's Transportation Enhancement program, which may be used for activities such as: Conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

The FHWA and the FTA encourage State DOTs, MPOs, and public transportation operators to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

17. What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decision-making continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency's planning resources and by augmenting their capabilities through greater use of GIS and remote sensing technologies (*see http://www.gis.fhwa.dot.gov/* for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

18. How have environmental, regulatory, and resource agency liaisons (Federally- and State DOT-funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of the TEA–21 spoke specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2003), 246 positions were being funded. Additional information on interagency funding agreements is available at: *http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm*.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: Addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and workplans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and

efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

19.What training opportunities are available to MPOs, State DOTs, public transportation operators and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?

Both the FHWA and the FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the Linking Planning and NEPA Workshop, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U. S. Fish and Wildlife Service offers Green Infrastructure Workshops that are focused on integrating planning for natural resources (''green infrastructure'') with the development, economic, and other infrastructure needs of society (''gray infrastructure'').

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (*e.g.*, noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

Transportation planning and NEPA courses offered by various agencies and private sources have been compiled as part of the Executive Order 13274 (Environmental Stewardship and Transportation Infrastructure Project Reviews) workgroup efforts. This list is posted at *http://www.fhwa.dot.gov/stewardshipeo/index.htm*.

*IV. Additional Information on This Topic*

Valuable sources of information are FHWA's environmental streamlining Web site (*http://environment.fhwa.dot.gov/strmlng/index.htm*) and FTA's environmental streamlining Web site (*http://www.environment.fta.dot.gov*). Another source of information and case studies is NCHRP Report 8–38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at *http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8–38*. In addition, AASHTO's Center for Environmental Excellence Web site is continuously updated with news and links to information of interest to transportation and environmental professionals (*http://www.transportation.environment.org*).

## Appendix B to Part 450—Fiscal Constraint of Transportation Plans and Programs [Revised]

**Background**

For over 40 years, the Congress has directed that federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134–135 and 49 U.S.C. 5303–5304). The Congress further refined and strengthened the planning process as the foundation for project decisions when it first enacted fiscal constraint provisions for transportation plans and programs as part of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

Fiscal constraint requires that revenues (Federal, State, local, and private) in transportation planning and programming are identified and ''reasonably expected to be available'' to implement projects required to be included in the metropolitan transportation plan, metropolitan Transportation Improvement Program (TIP), and the Statewide Transportation Improvement Program (STIP), while providing for the operation and maintenance of the existing highway and transit systems. Fiscal constraint has remained a key component of transportation plan and program development with the enactment of the Transportation Equity Act for the 21st Century (TEA–21) in 1998 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) on August 10, 2005.

The fiscal constraint requirement is intended to ensure that metropolitan transportation plans, TIPs, and STIPs reflect realistic assumptions about future revenues, rather than extensive lists including more projects than could realistically be completed with available revenues. Importantly, for the purposes of developing the metropolitan transportation plan and TIP, the MPO, State DOT, and public transportation operator(s) must cooperatively develop estimates of funds that will be available to support plan and program implementation [23 U.S.C. 134 (i)(2)(C), 23 U.S.C. 134(j)(1)(C), 49 U.S.C. 5301(a)(1), 49 U.S.C. 5303(j)(2)(C), and 49 U.S.C. 5303(j)(2)(C)]. In addition, the Clean Air Act's transportation conformity regulations specify that a conformity determination can only be made on a fiscally constrained metropolitan transportation plan and TIP [40 CFR 93.108]. Given this intent, compliance with the fiscal constraint requirement entails an analysis of revenues and costs to address the following fundamental question:

''Will the revenues (Federal, State, local, and private) identified in the TIP, STIP, or metropolitan transportation plan cover the anticipated costs of the projects included in this TIP, STIP, or metropolitan transportation plan, along with operation and maintenance of the existing system?''

If the projected revenues are sufficient to cover the costs, and the estimates of both revenues and costs are reasonable, then the fiscal constraint requirement has been satisfied. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available or committed.''

The FHWA and the FTA also realize the challenges associated with forecasting project and program costs and revenues, particularly in the ''outer years'' of a metropolitan transportation plan. Therefore, the FHWA/FTA provide a great deal of flexibility in demonstrating fiscal constraint. For example, in years when a Federal transportation authorization bill is not yet enacted, State DOTs, MPOs, and public transportation operators may project and assume Federal revenues for the ''outer years'' based on a trend line projection. Additional information is provided in the following sections and the ''Questions and Answers.''

''Reasonably Available'' Future Revenues and ''Available or Committed'' Funds

Revenue forecasts to support projects required to be included in a metropolitan transportation plan, TIP, and STIP may take into account new funding sources that are ''reasonably expected to be available.'' New funding sources are revenues that do not currently exist or that may require additional steps before the State DOT, MPO, or public transportation operator can commit such funding to transportation projects. As first required in ISTEA, these planned new revenue sources must be clearly identified.

Future revenues may be projected based on historic trends, including consideration of past legislative or executive actions. The level of uncertainty in projections based on historical trends is generally greatest for revenues in the ''outer years'' of a metropolitan transportation plan (*i.e.*, those beyond the first 10 years of the metropolitan transportation plan). Additionally, for purposes of developing the financial plan to support the metropolitan transportation plan, the FHWA and the FTA encourage the use of aggregate ''cost ranges/cost bands'' to define costs in the outer years of the metropolitan transportation plan, with the caveat that the future funding sources must be ''reasonably available.''

To support air quality planning under the 1990 Clean Air Act Amendments, a special requirement has been placed on air quality nonattainment and maintenance areas, as designated by the U. S. Environmental Protection Agency (EPA). Specifically, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are ''available or committed.'' Additionally, EPA's transportation conformity regulations specify that an air quality conformity determination can only be made on a fiscally constrained metropolitan transportation plan and TIP [40 CFR 93.108]. Therefore, nonattainment and maintenance areas may not rely upon proposed new taxes or other new revenue sources for the first two years of the TIP and STIP. Thus, new funding from a proposed gas tax increase, a proposed regional sales tax, or a major funding increase still under debate would not qualify as

''available or committed'' until it has been enacted by legislation or referendum.

Changes in Revenues or Costs After the Metropolitan Transportation Plan, TIP, or STIP are Adopted

In cases that the FHWA and the FTA find a metropolitan transportation plan or TIP/STIP to be fiscally constrained and a revenue source is subsequently removed (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. In such cases, the FHWA and the FTA will require the State DOT or MPO to identify alternative sources of revenue as soon as possible. Importantly, the FHWA and FTA will not act on new or amended metropolitan transportation plan, TIP, or STIP unless they reflect the changed revenue situation.

The same policy applies if project costs or operations/maintenance cost estimates change after a metropolitan transportation plan, TIP, or STIP are adopted. Such a change in cost estimates does not invalidate the adopted transportation plan or program. However, the revised costs must be provided in new or amended metropolitan transportation plan, TIP, or STIP. The FHWA and the FTA will not approve new or amended STIPs that are based on outdated or invalid cost estimates.

System Preservation, Operations, and Maintenance Costs

Since the enactment of ISTEA in 1991, fiscal constraint has encompassed operation and maintenance (O&M) of the system, as well as capital projects. On one hand, O&M activities typically do not involve Federal funds and are not listed individually in a metropolitan transportation plan, TIP, or STIP. However, the financial plans that support the metropolitan and statewide transportation planning processes must assess the adequacy of all sources of capital and O&M investment necessary to ensure the preservation of the existing transportation system, including provisions for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities. To support this assessment, the FHWA and the FTA expect that the State DOT, MPO, and public transportation operator(s) will provide credible cost estimates.

However, the FHWA and FTA largely defer to State and local governments and public transportation operators to define the specific level of systems O&M that is appropriate, since the FHWA and the FTA do not mandate a particular, specific level of O&M. Instead, the Federal government accepts that State and local governments, MPOs, and public transportation operators will adjust their O&M from year-to-year and decade-to-decade, based on community desires and requirements established through an open transportation planning process.

Outside the transportation planning process, there also is a longstanding Federal requirement that States properly maintain, or cause to be maintained, any projects constructed under the Federal-aid Highway Program [23 U.S.C. 116]. However, beyond this basic requirement of proper maintenance, the FHWA and the FTA do not question State and local government, MPO, or public transportation operator decisions on specific uses of funding or question State and local priorities that balance the operation and maintenance of the existing transportation system with needs for transportation system expansion. Instead, the FHWA and the FTA ensure that the process used by the State DOT, MPO, and public transportation operator(s) to establish priorities is consistent with the transportation planning statute and regulations and that the funding sources identified to address these priorities are ''reasonably expected to be available.'' In addition, consistent with regulations implementing the Clean Air Act, the FHWA and the FTA will also continue to assure that priority is given to the timely implementation of transportation control measures in the air quality State Implementation Plan [40 CFR 93.103 and 40 CFR 93.116].

There is a subtle yet important distinction between projects or project phases listed in the TIP/STIP and the financial plan/financial information that supports the TIP/STIP. It is not required that all highway and transit O&M projects be included in the TIP/STIP, per se. However, these systems-level O&M costs and revenues must be reflected in the financial plan that accompanies and supports the TIP/STIP. Similarly, the O&M costs reflected in the financial plan for the first two years of the TIP/STIP in nonattainment and maintenance areas are not subject to the ''available or committed'' requirement. Rather, they must be ''reasonably expected to be available.''

Funding Gaps

Substantial investments have been made in highway and transit infrastructure. The short- and long-term needs for system preservation, operation, and maintenance can be enormous. Simply maintaining the existing system in a State or large metropolitan area can demand billions of dollars in investments, while system expansion demands investments of a similar scale. At times, the combination of these competing demands can cause temporary shortfalls in a State's or MPO's budget. To the extent there appear to be shortfalls, the MPO or State DOT must identify a strategy to address these funding gaps prior to the adoption of an updated metropolitan transportation plan, TIP, or STIP (or the amendment of an existing metropolitan transportation plan, TIP or STIP). The strategy should include a plan of action that describes the steps that will be taken to make funding available within the timeframe shown in the financial plan needed to implement the projects in the metropolitan transportation plan. The strategy may rely upon the past history of the State, MPO, or public transportation operator(s) to obtain funding. If the strategy relies on new funding sources, the MPO, State, public transportation operator(s) must demonstrate that these funds are ''reasonably expected to be available.''

Questions and Answers

*Statewide and Metropolitan Transportation Improvement Program (STIP and TIP):*

1. How should Federal and State funding be reflected in the TIP and STIP?

The Federal funding reflected in the TIP and STIP may be based on authorization levels for each year of the TIP and/or STIP, although obligation authority limitations could be utilized as a more conservative approach. In addition, for federally-funded projects, the TIP and/or STIP must identify the appropriate ''matched funds,'' by source. Importantly, because the State DOT will be involved in the development of all TIPs (as well as the STIP), the cumulative total of the State/Federal funds in the TIPs and STIP must not exceed, on an annual basis, the total State/Federal funds reasonably available to the State.

Financial forecasts (for revenues and costs) to develop TIPs and STIPs (as well as for metropolitan transportation plans) must utilize an inflation rate to reflect ''year of expenditure dollars'' to account for the time-based value of money. The inflation rate(s) should be based on sound, reasonable financial principles and information, developed cooperatively by the State DOT, MPOs, and public transportation operators. To ensure consistency, similar financial forecasting approaches should be utilized for all TIPs and STIPs in a given State. In addition, the financial forecast approaches, assumptions, and results should be clear and well-documented.

2. How should transit O&M activities and costs be treated in the TIP and STIP and their supporting financial plans?

With the exception of federally-supported transit operating costs in urbanized areas with populations less than 200,000, transit O&M activities are not required to be listed individually in the TIP, STIP, and metropolitan transportation plan. However, the supporting financial plans for the TIP, STIP, and metropolitan transportation plan must demonstrate the ability of operators to adequately operate and maintain their existing systems, as well as the new projects and strategies listed in the TIP, STIP, and metropolitan transportation plan. ''Adequate'' levels of transit service and associated O&M costs are determined by local officials, who may decide to defer maintenance and/or increase operating revenues as a means of balancing their budgets.

3. How exact should the funding estimates for O&M be for the financial plans/information that support the TIP and STIP?

Revenue and cost estimates for O&M will be more general than estimates for individual projects. For the financial plan that must accompany the TIP, the MPO may rely on the information contained in the financial plan that supports the metropolitan transportation plan to develop four-year ''snapshot'' estimates of O&M funding sources and costs. Similarly for the STIP, the State DOT may utilize other documents (*e.g.*, the long-range statewide transportation plan and/or State DOT budget information) to demonstrate sufficient resources for the operations and maintenance of the State surface

transportation system for at least the time period covered by the STIP. O&M involving local and/or State funds may be shown as a ''grouped line item'' in the financial plans for the TIP and STIP.

The FHWA and the FTA generally rely on the overall O&M information and analysis provided in support of the metropolitan and statewide transportation plans, including information on substantial changes to revenue streams for short-term (*i.e.*, programming-level) operations and maintenance expenditures. It is also reasonable to rely on supplemental State DOT information for non-metropolitan areas if similar information and/or analysis are not contained in a financial plan for the long-range statewide transportation plan or the TIP and STIP. Additionally, knowledge of local and/or State funding levels and previous year expenditures related to operations and maintenance compared to systems-level performance measures (*e.g.*, pavement and/or bridge conditions) can provide insightful information on the reasonableness of future local and/or State investments on highway and transit O&M.

Possible sources of data for O&M revenues and costs for States and MPOs to use in collecting this information for the State and local highway systems include the *Highway Statistics* [1] publication, capital improvement programs or budgets, and pavement management systems. For transit O&M costs, the best data sources likely are the public transportation operators and/or the units of government that are responsible for the public transit system(s), as well as the information contained in FTA's financial capacity reviews conducted for its Section 5307 (Urbanized Formula) and Section 5309 (New Starts, Bus, and Rail Modernization) programs.[2] The key is for State DOTs, MPOs, and public transportation operators (via the ''3–C'' planning process) to coordinate with the various local agencies to determine the best sources of these data.

As a condition for applying for grants under FTA's Section 5307 and Section 5309 programs, public transportation operators are required to self-certify their financial capacity to pay current costs from existing revenues and to meet expansion costs in addition to their existing operations from projected revenues. The FTA assesses the adequacy of financial capacity self-certifications at the TIP/STIP approval stage and for any capital grant approval (FTA's Capital Investment Grant program in 49 U.S.C. 5309 includes additional financial assessment requirements). Similar to the joint FHWA/FTA certification of the metropolitan panning processes in Transportation Management Areas, deficiencies are recorded for grantees that do not meet financial capacity requirements. The requirements, set forth in FTA Circular 7800.1A (Financial Capacity Policy),[3] call for public transportation operators to ''* * *maintain and operate current assets, and to operate and maintain the new assets on the same basis, providing at least the same level of service for at least one replacement cycle, or 20 years, as appropriate.'' Public transportation operators could attach their financial capacity self-certifications, with appropriate supporting information, to the financial plan supporting the TIP/STIP.

4. Must innovative finance mechanisms be reflected in the TIP/STIP? To what extent must Advance Construction (AC) be shown in the TIP/STIP?

Yes, innovative financing techniques (*e.g.*, tolls, Grant Anticipated Revenue Vehicles (GARVEE bonds), State Infrastructure Banks (SIBs), and Transportation Infrastructure Finance and Innovation Act (TIFIA)) must be reflected in the TIP and/or STIP. Additional information on innovative finance can be obtained via the Internet at the following FHWA and FTA Web sites:

- FHWA Innovative Finance Guidance *http://www.fhwa.dot.gov/innovativefinance/ifguidnc.htm*
- FTA Innovative Finance Guidance *http://www.fta.dot.gov/1263_ENG_HTML.htm*
- FTA Flexible Funds Guidance *http://www.fta.dot.gov/1254_ENG_HTML.htm*

Advance Construction (AC) and partial conversion of advanced construction (PCAC) are cash flow management tools that allow States to begin projects with their own funds and only later convert these projects to Federal assistance. AC allows a State to request and receive approval to construct Federal-aid projects in advance of the apportionment of authorized Federal-aid funds. Typically, States (at their discretion) ''convert'' AC projects to Federal-aid at any time sufficient Federal-aid funds and obligation authority are available at one time. Under PCAC, a State (at its discretion) partially ''converts'' AC projects to Federal-aid funds in stages.

Title 23, U.S.C., section 115(c) specifies that an AC project application may be approved ''* * * only if the project is included in the STIP.'' Because AC does not constitute a commitment of Federal funds to a project, the financial plan and/or funding information for the TIP and STIP, respectively, need to demonstrate sufficient non-Federal revenues to provide 100 percent funding for the projects listed as ''AC'' in the TIP and/or STIP. The total amount of allowable AC in the TIP and/or STIP is determined by: (a) The State's current unobligated balance of apportionments; and (b) the amount of Federal funds anticipated in the subsequent fiscal years of an approved STIP.

In practice, an AC project/project phase essentially is included in the TIP and/or STIP at two different points in time: (a) As State or local funds prior to the initial authorization of the AC project (including an assurance from the State that adequate State funds are available to ''front'' the cost of the project/project phase); and (b) prior to the authorization of the project/project phase to ''convert'' it from AC to a Federal-aid funding program (including a demonstration from the State that this ''conversion'' maintains fiscal constraint with other Federal-aid projects). Therefore, in the year of an AC project's ''conversion,'' the project is considered as both a State revenue source and a Federal-aid debit. Similarly, Federal funding utilized to make payments on debt instruments such as GARVEE bonds must be deducted from the amounts of Federal funds available for new federally-funded projects. In either case, the TIP and/or STIP should show the obligation of Federal-aid category funds and the resultant increase in available non-Federal funds.

5. To what extent can future Federal program funds be assumed for developing TIPs and STIPs, particularly beyond the current authorization or appropriations period?

When the TIP or STIP period extends beyond the current authorization period for Federal program funds, ''available'' funds may include an extrapolation based on historic authorizations of Federal funds that are distributed by formula. For Federal funds that are distributed on a discretionary basis (including FTA Section 5309, earmarks, and congressionally-designated funding), any funding beyond that currently authorized and targeted to the area may be considered as reasonably available, if past history supports such funding levels.

Therefore, when determining future year authorizations/apportionments, the growth rate as determined through the previous authorizations can be used to approximate the future annual growth rate of Federal authorizations. For example, since the TEA–21 was a six-year bill, the growth rate could be determined over the entire authorization period (fiscal year (FY) 1998–FY 2003), but excluding the Revenue Aligned Budget Authority from the calculations.

Upon the enactment of new authorizing legislation, State DOTs (in conjunction with MPOs and public transportation operators) must utilize the actual authorization levels and individual discretionary project funding amounts in the development of any updated TIP/STIP or amendment of an existing TIP/STIP.

Metropolitan Transportation Plan

6. How should revenues from ''public-private partnerships'' be treated?

''Public-private partnerships'' (PPP) are an emerging area related to transportation finance that refer to contractual agreements formed between a public agency and private sector entity that allow for greater private sector participation in the delivery of transportation projects. Traditionally, private sector participation has been limited to separate planning, design, or construction contracts as a fee-for-service arrangement, based on the public agency's specifications.

[1] The FHWA's Highway Statistics Series consists of annual reports containing analyzed statistical data on motor fuel; motor vehicles; driver licensing; highway-user taxation; State and local government highway finance; highway mileage, and Federal-aid for highways. These data are presented in tabular format as well as selected charts and have been published each year since 1945. The annual Highway Statistics reports are available from the FHWA's Office of Highway Policy Information at *http://www.fhwa.dot.gov/policy/ohpi/hss/index.htm.*

[2] Additional information on FTA's Section 5307 and Section 5309 programs is available from the FTA at *http://www.fta.dot.gov.*

[3] FTA Circular 7800.1A (Financial Capacity Policy) was last updated on January 30, 2002, and is available from the FTA at *http://www.fta.dot.gov/legal/guidance/circulars/7000/424_1081_ENG_HTML.htm.*

Expanding the private sector role allows the public agencies to tap private sector technical, management, and financial resources in new ways to achieve certain public agency objectives (*e.g.*, greater cost and schedule certainty, supplementing in-house staff, innovative technology applications, specialized expertise, or access to private capital). The private partner can expand its business opportunities in return for assuming these new or expanded responsibilities and risks. Additional information on new PPP approaches to project delivery can be obtained via the Internet at *http://www.fhwa.dot.gov/ppp/index.htm*.

The PPP projects often are undertaken to supplement conventional procurement practices by taking additional revenue sources and mixing a variety of funding sources, thereby reducing demands on constrained public budgets. Some of the revenue sources used to support PPPs include: (a) Shareholder equity; (b) grant anticipation bonds (GARVEEs and Grant Anticipation Notes); (c) general obligation bonds; (d) SIB loans; (e) direct user charges (tolls and transit fares) leveraged to obtain bonds; and (f) other public agency dedicated revenue streams made available to a private franchisee or concessionaire (*e.g.*, leases, direct user charges from other tolled facilities, and shadow tolls). Additional information on these financing approaches and tools is available online from the American Association of State and Transportation Officials at *http://www.InnovativeFinance.org*.

Within the financial plan that supports the metropolitan transportation plan, a prospective PPP should be addressed on a case-by-case basis, reflected as a source that is ''reasonably expected to be available.''

7. How should future costs be estimated and documented?

Financial forecasts (for revenues and costs) to support the metropolitan transportation plan (as well as the TIP and STIP) must utilize an inflation rate to reflect ''year of expenditure dollars'' to account for the time-based value of money. The inflation rate(s) should be based on sound, reasonable financial principles and information, developed cooperatively by the MPO, State DOT, and public transportation operator(s). To ensure consistency, similar financial forecasting approaches should be utilized for the metropolitan transportation plan and TIP in a given MPO.

Cost forecasts can be established in a number of ways. For example, O&M can be based on historic data applied on a per-lane mile and functional classification basis or an annual lump sum basis. Capital costs can be based on historic costs for: (a) An interchange; (b) new construction on new rights-of-way; (c) structure (number, type, and deck square footage (area) for various structure types); (d) transit vehicles for rolling stock procurement; or (e) widening and/or reconstruction, based on the extent of the project. In addition, capital cost estimates can be based on project-specific estimates contained in planning, environmental, or engineering studies, and updated as new information is prepared as part of project development.

Transit operating costs can be estimated by general mode type on a revenue-mile or passenger-mile basis, in accordance with the following principles: (a) Reflect historic operations; (b) anticipate future operations; (c) address all functional responsibilities of the transit property; (d) focus on major cost components; (e) apply consistent level of service data: (f) apply peer transit property experience; (g) apply readily available information; (h) provide fully-allocated costs for use in cost-effectiveness analysis; (i) structure for sensitivity analyses; and (j) document model theory and application [for additional information, see ''Chapter 2: Principles of Operating and Maintenance Cost Modeling'' in Estimation of Operating and Maintenance Costs for Transit Systems, available on the FTA Web site at *http://www.fta.dot.gov/transit_data_info/reports_publications/publications/finance/estimation_operating/1210_2455_ENG_HTML.htm*]. Transit system capital costs involve the estimation of capital costs for a broad variety of project components and the projection of future construction. Special consideration should be given to factors such as design changes, component upgrades, lengthened construction schedules, and the effects of general price inflation.

Revenues and related cost estimates for O&M should be based on a reasonable, documented process. Some accepted practices include:

- Trend analysis (a functional analysis based on expenditures over a given duration, in which costs or revenues are increased by inflation, as well as a growth percentage based on historic levels). This analysis could be linear or exponential. When using this approach, however, it is important to be aware of new facilities or improvements to existing facilities. Transit operations and maintenance costs will vary with the average age of the bus or rail car fleet.
- Cost per unit of service (*e.g.*, lane-mile costs, centerline mile costs, traffic signal cost, transit peak vehicles by vehicle type, revenue hours, and vehicle-miles by vehicle type).

Regardless of the methodology employed, the assumptions should be adequately documented by the State DOT, the MPO, and the public transportation operator, ideally reflected in the State DOT and the MPO self-certification statements on the statewide and metropolitan transportation planning processes.

The FHWA and the FTA recognize that estimating current and reasonably available new revenues and required operations and maintenance costs over a 20-year planning horizon is not an ''exact science.'' To provide discipline and rigor, public agencies should attempt to be as realistic as possible, as well as ensure that all costs assumptions are publicly documented.

8. Does the financial plan need to include O&M costs for the entire transportation system or simply the portion for which the State is responsible? How should operations and maintenance be reflected in the financial plan?

Titles 23, U.S.C., Section 134(i)(2)(D) and 49, U.S.C., Section 5303(i)(2)(D) require development of a metropolitan transportation plan that includes capital investment and other strategies to preserve the existing and projected future infrastructure needs. It also requires operational and management strategies [23 U.S.C. 134(i)(2)(E) and 49 U.S.C. 5303(i)(2)(E)] to improve the performance of existing transportation facilities. The metropolitan transportation plan also must contain a financial plan that demonstrates how the adopted transportation plan can be implemented, indicating resources from public and private sources that are reasonable expected to be made available to carry out the transportation plan [23 U.S.C. 134(i)(2)(C) and 49 U.S.C. 5303(i)(2)(C)]. Therefore, the financial plan that supports the metropolitan transportation plan must reflect the estimated costs of constructing, operating, and maintaining the total (existing plus planned) transportation system, including portions of the system owned and operated by local governments.

Other Issues

9. What are some examples of ''reasonable'' and ''not reasonable'' revenue forecasting assumptions?

Whether or not a funding source is reasonable may require a judgment call. Illustrative (but not all-inclusive) examples of ''reasonable'' and ''not reasonable'' assumptions are highlighted in the following table. Please note, however, that those described as ''reasonable'' do not necessarily meet the special test of ''available or committed'' funds.

| | |
|---|---|
| Reasonable ..... | A new toll with funds to be dedicated to a particular project or program may be reasonable, if supported by the Governor and there are indications of other support needed to enact or institute the toll. |
| Reasonable ..... | A new local gas or sales tax requiring State legislation is reasonable if there are indications of sufficient support to enact the new tax. |
| Not reasonable ..... | Funds from an upcoming ballot initiative would not be reasonable if polls indicate strong likelihood of defeat or there is a history of repeated defeat of similar ballot initiatives in recent years. |
| Not reasonable ..... | A 25 percent increase in gas tax revenues over five years is not reasonable if the increase in the previous five years was only 15 percent, unless there are special circumstances to justify and support a significantly higher increase than the historic rate. |

| | |
|---|---|
| Not reasonable ..... | An assumption that the metropolitan area will receive 30 percent of a Federal discretionary program (*e.g.,* FTA New Starts) is not reasonable if the area has never received more than 10 percent in the past, unless there are special circumstances to justify and support such an assumption. |

10. What is the connection (if any) between financial plans that support Statewide and metropolitan transportation plans and programs and financial/funding information for FHWA major projects and FTA Capital Investment Grant projects?

In general, the financial plans that support statewide and metropolitan transportation plans and programs do not need to contain the specific cash flow schedule information that typically is included for FHWA major projects (projects with an estimated total cost of $500 million or more, pursuant to Section 1904 of the SAFETEA–LU) or FTA Capital Investment Grant program projects. However, because a large-scale transportation project likely will have a substantial effect on a Statewide or metropolitan transportation plan and program, this project-specific cash flow schedule information can serve as a valuable resource on annual levels and sources of revenues for developing the financial plans that support Statewide and metropolitan transportation plans and programs.

Additional information on financial planning for FHWA major projects and FTA New Starts projects can be obtained via the Internet at:

- FHWA Financial Plan Guidance (May 23, 2000) *http://www.fhwa.dot.gov/programadmin/mega/fplans.htm#fpgmemo*
- FHWA Major Project Program Cost Estimating Guidance (June 4, 2004) *http://www.fhwa.dot.gov/programadmin/mega/cefinal.htm*
- Guidance for Transit Financial Plans (June 2000) *http://www.fta.dot.gov/documents/gftfp.pdf*
- ''Financial Planning for Transit'' in Procedures and Technical Methods for Transit Project Planning *http://www.fta.dot.gov/grant_programs/transportation_planning/major_investment/technical_guidance/16352_ENG_HTML.htm*
- Estimation of Operating and Maintenance Costs for Transit Systems (December 1992) *http://www.fta.dot.gov/transit_data_info/reports_publications/publications/finance/1210_ENG_HTML.htm*

## PART 500—MANAGEMENT AND MONITORING SYSTEMS

2. Revise the authority citation for part 500 to read as follows:

**Authority:** 23 U.S.C. 134, 135, 303, and 315; 49 U.S.C. 5303–5305; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

3. Revise § 500.109 to read as follows:

### § 500.109 CMS.

(a) For purposes of this part, congestion means the level at which transportation system performance is unacceptable due to excessive travel times and delays. Congestion management means the application of strategies to improve system performance and reliability by reducing the adverse impacts of congestion on the movement of people and goods in a region. A congestion management system or process is a systematic and regionally accepted approach for managing congestion that provides accurate, up-to-date information on transportation system operations and performance and assesses alternative strategies for congestion management that meet State and local needs.

(b) The development of a congestion management system or process should result in performance measures and strategies that can be integrated into transportation plans and programs. The level of system performance deemed acceptable by State and local officials may vary by type of transportation facility, geographic location (metropolitan area or subarea and/or non-metropolitan area), and/or time of day. In both metropolitan and non-metropolitan areas, consideration needs to be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity of those lanes.

## TITLE 49—TRANSPORTATION

4. Revise 49 CFR part 613 to read as follows:

## PART 613—METROPOLITAN AND STATEWIDE PLANNING

**Subpart A—Transportation Planning and Programming Definitions**

Sec.
613.100 Definitions.

**Subpart B—Statewide Transportation Planning and Programming**

613.200 Statewide transportation planning and programming.

**Subpart C—Metropolitan Transportation Planning and Programming**

450.300 Metropolitan transportation planning and programming.

### Subpart A—Transportation Planning and Programming Definitions

#### § 613.100 Definitions.

The regulations in 23 CFR 450, subpart A, shall be followed in complying with the requirements of this subpart.

### Subpart B—Statewide Transportation Planning and Programming

#### § 613.200 Statewide transportation planning and programming.

The regulations in 23 CFR 450, subpart B, shall be followed in complying with the requirements of this subpart.

### Subpart C—Metropolitan Transportation Planning and Programming

#### § 613.300 Metropolitan transportation planning and programming.

The regulations in 23 CFR 450, subpart C, shall be followed in complying with the requirements of this subpart.

Issued on: June 1, 2006.

**J. Richard Capka,**

*Administrator, Federal Highway Administration.*

**Sandra K. Bushue,**

*Deputy Administrator, Federal Transit Administration.*

[FR Doc. 06–5145 Filed 6–2–06; 10:22 am]

**BILLING CODE 4910–22–P**

Federal Register

**Friday,**
**June 9, 2006**

## Part III

# Department of Education

**Grants and Cooperative Agreements—Notice of Final Priorities and Notices of Funding Availability; Notices**

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs); Funding Priorities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final priorities.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces certain final priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces two priorities—a priority for the Disability Business Technical Assistance Centers (DBTACs) and a priority for the Disability Business Technical Assistance Center Coordination, Outreach, and Research Center (DBTAC CORC). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2006 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

**DATES:** *Effective Date:* These priorities are effective July 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

### Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program, including the DRRP program, in the **Federal Register** on February 7, 2006 (71 FR 6318). The NPP included a background statement that described our rationale for each priority proposed in that notice.

This notice of final priorities (NFP) addresses 2 of the 15 priorities proposed in the NPP. The priorities addressed in this NFP are as follows:

- *Disability Business Technical Assistance Centers (DBTACs)* (a DRRP, designated as Priority 10 in the NPP).
- *Disability Business Technical Assistance Center Coordination, Outreach, and Research Center (DBTAC CORC)* (a DRRP, designated as Priority 11 in the NPP).

Because of the volume of comments received in response to the NPP, NIDRR has published two other separate notices of final priorities for the other 12 priorities proposed in the NPP (i.e., those priorities designated as Priorities 1 through 9 and 13 through 15 in the NPP). More information on these other priorities and the projects and programs that NIDRR intends to fund in FY 2006 can be found on the Internet at the following site: *http://www.ed.gov/fund/grant/apply/nidrr/priority-matrix.html.*

This NFP contains several changes from the NPP in both priorities. We fully explain these changes in the *Analysis of Comments and Changes* section that follows.

### Analysis of Comments and Changes

In response to our invitation in the NPP, 606 parties submitted comments on the proposed priorities addressed in this NFP.

An analysis of the comments and the changes in the priorities since publication of the NPP follows.

In their responses to the NPP, many commenters failed to specify whether their comments addressed one or both of the proposed priorities. In addition, many comments concerned the relationship between the DBTACs and the DBTAC CORC and, therefore, relate to both priorities. In reviewing the comments received, we determined that the comments could be organized into the following general categories: (1) DBTACs and Core Functions, (2) Research and Research Requirements, and (3) Other. Therefore, we have organized the *Analysis and Comments and Changes* section using these three categories.

Of the 606 comments received, the majority of comments (597) expressed concerns about the structure of the DBTACs and the proposed changes to the DBTAC's activities; these concerns included questions related to the core functions of the currently funded DBTACs and NIDRR's proposal to require DBTACs to conduct research. We address these comments under the categories *DBTACs and Core Functions* and *Research and Research Requirements.* In addition, several commenters raised issues relating to technology, resource allocation, underserved populations, use of the name DBTAC, interagency coordination and collaboration and other concerns. We address these comments under the heading *Other.*

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

*General*

The final priorities announced in this NFP are designed to align the DBTAC and DBTAC CORC activities with NIDRR's mission by requiring grantees to conduct scientifically based research and to use evidence-based practices. Consistent with NIDRR's Final Long-

Range Plan for FY 2005–2009 (Plan), NIDRR is establishing these priorities to restructure and strengthen the DBTAC program, and to further enable program grantees to make significant impacts on disability and rehabilitation outcomes through scientifically based research.

*DBTACs and Core Functions*

*Comment:* Many commenters stated opposition to what they believed amounted to a discontinuance of the DBTAC program, and urged NIDRR to retain the program.

*Discussion:* NIDRR has not proposed to eliminate the DBTAC program. The proposed DBTACs priority is designed to expand the existing DBTAC program by aligning the mission of the program with NIDRR's mission of improving the lives of people with disabilities through research.

*Changes:* None.

*Comment:* Some commenters urged NIDRR to maintain the core functions of the DBTACs; these core functions are defined as information and referral, technical assistance, training, and dissemination of information on all titles of the Americans with Disabilities Act of 1990, as amended (ADA).

*Discussion:* The proposed DBTACs priority requires grantees to perform the core activities carried out under the existing DBTAC program. NIDRR believes that these activities are critical for DBTACs to help ensure full implementation of the ADA. NIDRR expects all grantees funded under the DBTACs priority to use their grant award to support activities that are consistent with the goals and purposes of all titles of the ADA.

*Changes:* None.

**Research and Research Requirements**

*Comment:* Several commenters expressed concern that the research component of the proposed DBTACs priority is being restricted exclusively to employment-related research.

*Discussion:* While NIDRR believes that, given their relationships with both the business and disability communities, the DBTACs are uniquely positioned to conduct research on critical disability employment questions, NIDRR does not expect that DBTAC studies will be restricted to employment-related research. Consistent with the Plan, NIDRR establishes research priorities under specific research domains. The DBTAC activities support research in the employment domain and in the community living/participation domain (for more information on these domains, see the Plan). The proposed DBTACs priority provides for studies related to all titles of the ADA, and a range of other research topics, including technology and postsecondary education, technology and school-to-work transition, employment, and participation/community living.

*Changes:* None.

*Comment:* Some commenters were particularly concerned that the proposed DBTACs priority would shift too much of the DBTACs' focus to employment outcomes and to research. Other commenters suggested that by requiring DBTACs to conduct research, DBTACs would be forced to use limited funds and staff to conduct research activities, which would result in a dilution of resources for other activities that are core functions of the currently funded DBTACs. Many of these commenters recommended that NIDRR specify the percentage of DBTAC funding that DBTACs should devote to research activities.

*Discussion:* NIDRR does not agree that the proposed DBTACs priority would shift too much of the focus to employment outcomes and to research. As stated elsewhere in this NFP, NIDRR has included research in the DBTACs priority in order to align the DBTAC program with NIDRR's overall mission. When addressing the research requirements of the DBTACs priority, NIDRR expects that grantees will consult with and receive expert technical assistance from the DBTAC CORC. Coordination with the DBTAC CORC will help ensure that DBTAC funds and resources devoted to research activities are used efficiently. In addition, the DBTAC CORC will help ensure that DBTACs conduct scientifically based studies by providing them with significant support in research planning and development, and on-going technical assistance.

NIDRR does not prescribe specific funding amounts or allocations of project budgets in the proposed DBTACs and DBTAC CORC priorities. While we believe that the required DBTACs research activities would require grantees to devote at least fifteen percent of their project funds to research activities, NIDRR will determine whether the proposed amount is appropriate based on the nature and scope of the research activities to be performed.

*Changes:* None.

*Comment:* Commenters questioned the new focus of the DBTACs on research. A large number of these commenters recommended that the DBTAC CORC be primarily responsible for research.

*Discussion:* NIDRR does not agree that the DBTAC CORC should have primary responsibility for research. The proposed DBTACs priority requires that research activities involve a collaborative partnership between the DBTAC CORC and the regional DBTACs. The proposed DBTAC CORC priority requires the DBTAC CORC to collaborate and consult with each regional DBTAC to achieve this goal. NIDRR expects that regional DBTACs will each have a focused program of research that is supported by the DBTAC CORC. Consistent with the proposed DBTAC CORC priority, the DBTAC CORC would have primary responsibility for systematic reviews and analyses of data and products submitted by the regional DBTACs. In addition, the DBTAC CORC would be responsible for reviewing regional DBTAC research proposals. As explained in the *Background* statement for the proposed DBTAC CORC priority in the NPP, the details regarding the administration of the required DBTAC CORC activities will be specified in the Department's cooperative agreement with the grantee that receives an award under this priority.

*Changes:* None.

*Comment:* Commenters requested clarification on how NIDRR envisions the respective roles of the DBTACs and the DBTAC CORC in research activities.

*Discussion:* Under the proposed DBTAC CORC priority, the DBTAC CORC is expected to take the lead role in facilitating the development of a coordinated national research agenda for the DBTACs. Under the DBTACs priority, each DBTAC grantee must participate in and conduct research; at a minimum, DBTAC grantees are expected to conduct small research projects.

NIDRR envisions a two-stage process for regional DBTAC research activities. The first stage will involve regional DBTAC preparation and submission of a preliminary research proposal that includes a brief description of a proposed research plan identifying topic(s), methodology, and expected outcomes to the DBTAC CORC. NIDRR expects that these preliminary research proposals will be further informed by systematic reviews and analyses by the DBTAC CORC. In the second stage, the DBTAC CORC will assess the merits of each research proposal and provide ongoing, expert technical assistance to each regional DBTAC. The DBTAC CORC Review Board, which will be composed of expert advisor(s), a methodology consultant, a research consortium coordinator, and research analysts, will support these activities. The DBTAC CORC Review Board will review research proposals submitted by

the DBTACs, as well as DBTAC plans for new research activities, products, and publications. NIDRR envisions that the DBTAC CORC will support the regional DBTACs' research by using its expertise as well as the data provided by the regional DBTACs to generate research questions and hypotheses for DBTAC research.

Similar to the regional DBTACs, the DBTAC CORC must also conduct research. NIDRR expects that the research conducted by the DBTAC CORC will complement research activities being implemented as part of the national DBTAC research agenda.

We believe that the proposed priorities require some additional information to clarify the responsibilities of and the relationship between the DBTAC CORC and the regional DBTACs.

*Changes:* NIDRR has revised the DBTACs and the DBTAC CORC priorities to provide more information on how NIDRR envisions the implementation and coordination of DBTAC and DBTAC CORC research-related activities, particularly the responsibilities and processes for collaboration and research capacity building. In an effort to clarify the research component of the DBTACs' priority, we have changed the order of the requirements and have included, in paragraphs (e), (f), and (g), additional information about the research-related responsibilities of the DBTACs and the DBTAC CORC, including the responsibility of all centers to collaborate. In addition, we have revised paragraphs (c), (d), and (e) of the DBTAC CORC priority to provide more information about DBTAC CORC research requirements and the requirements relating to DBTACs' research and collaboration. A more detailed description of the changes follows:

We have revised paragraph (e) of the DBTACs' priority and paragraph (e) of the DBTAC CORC priority to clarify the two-stage process for the submission of preliminary research proposals by the DBTACs, the DBTAC CORC's review of DBTAC research proposals, and the provision of technical assistance and support by the DBTAC CORC to assist DBTACs with achievement of expected outcomes and to identify areas of potential collaborative research. These paragraphs also have been revised to clarify the responsibility of the DBTACs to conduct rigorous research beginning in the second year of the project and the requirement that the DBTAC CORC provide on-going technical assistance and support to the DBTACs to help ensure that the DBTACs' research is scientifically based and of high quality.

We have moved and revised paragraph (h) of the proposed DBTACs priority. The paragraph, now designated as paragraph (f), has been revised to clarify that DBTACs are responsible for providing their program data and findings to the DBTAC CORC so that the DBTAC CORC can produce evidence reports, identify gaps in the research agenda where new or additional research is warranted, conduct relevant research, assist with an enhanced understanding of ADA compliance and implementation issues on a national level, and generate topics for a national DBTAC research agenda. We also have revised this paragraph to clarify that the specific research to be conducted by the individual DBTACs will be determined through coordination between the DBTAC and the DBTAC CORC.

We have revised paragraph (f) of the proposed DBTACs priority (now designated as paragraph (g)) to clarify that DBTACs will collaborate with, and receive support from, the DBTAC CORC Review Board as they evaluate and disseminate their research-based information.

We have revised paragraphs (c) and (d) of the DBTAC CORC priority to clarify the research requirement for the DBTAC CORC and to provide more information about the DBTAC CORC Review Board. We clarified who will serve on the DBTAC CORC Review Board and what functions the board will perform. The board must be composed of expert advisor(s), a methodology consultant, a research consortium coordinator, and research analysts. The board will review DBTAC research proposal plans for new research activities, products, and publications; assist to identify and recommend research activities that are best conducted via collaborative research; and conduct systematic reviews of the DBTAC research.

*Comment:* One commenter asked NIDRR to clarify the roles and responsibilities between the DBTACs and the DBTAC CORC in collecting and analyzing research. For example, the commenter specifically asked if NIDRR intends that the DBTAC CORC will be responsible for analyzing data that DBTACs collect, or if DBTACs will be required to complete the entire research process for their studies.

*Discussion:* For each research study conducted by a DBTAC using DBTAC funding, NIDRR intends that the regional DBTAC responsible for the study will collect and analyze the research study data, consistent with scientifically based research standards and procedures. All DBTACs are required to conduct research. Nothing in the DBTACs priority, however, prohibits DBTACs from proposing joint studies that they can conduct with other DBTACs. If DBTACs are engaging in joint studies, at least one of the DBTACs must be responsible for collecting and analyzing research study data.

*Changes:* None.

*Comment:* One commenter suggested that other NIDRR-funded entities specializing in disability research, such as the Rehabilitation Research and Training Centers (RRTCs), should be required to conduct the research that NIDRR proposes to include as part of the DBTACs priority. This commenter also stated that NIDRR should not change the service structure of the DBTACs to include a research component.

*Discussion:* NIDRR does not agree with this comment and believes that it is critical to align the DBTACs with NIDRR's overall research mission. Both the DRRP and RRTC program mechanisms have unique, valued features. In general, the DRRP mechanism offers a more flexible vehicle to support certain research and training objectives than the RRTC mechanism. DRRPs may include research, demonstration projects, training, and related activities that help maximize the full inclusion and integration of individuals with disabilities into society and improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. Consistent with NIDRR's mission, NIDRR-funded entities specializing in disability research are required to conduct research. Accordingly, NIDRR expects that grantees funded under the DBTACs and DBTAC CORC priorities, both of which are priorities funded under the DRRP program, will conduct research.

*Changes:* None.

*Comment:* One commenter stated that each of the 10 geographically dispersed DBTACs have unique strengths, and expressed a concern that requiring them all to conduct research would make it difficult to maintain consistency and ensure high quality services and products. Further, the commenter recommended that NIDRR support a national research center to be responsible for the information technology assistance and support previously provided to DBTACs so that the services would be integrated into a central location.

*Discussion:* NIDRR agrees that consideration must be given to the fact that the skills of the researchers at each DBTAC may differ, and that

coordination among regional DBTACs is needed. NIDRR expects that the DBTAC CORC will provide a wide range of support and technical assistance, including significant support to the regional DBTACs in research planning and development activities. The DBTAC CORC is expected to provide support and ongoing technical assistance to the regional DBTACs for the duration of their project periods. NIDRR believes that the DBTAC CORC activities and the expertise of the DBTAC CORC Review Board will help to build research capacity across regional DBTAC projects and help ensure that the DBTACs conduct scientifically based research that meets the highest possible standards of quality.

NIDRR also agrees that coordination of research activities for the 10 regional DBTACs is critical. Therefore, NIDRR expects that the DBTAC CORC will centralize some aspects of DBTAC operations as well as facilitate coordination among the DBTACs by establishing a coordinated national DBTAC research agenda.

*Changes:* None.

*Comment:* Several commenters suggested that adding a research component to the DBTAC program would duplicate NIDRR's other research efforts. Some commenters also stated that the proposed DBTAC CORC would duplicate the efforts of NIDRR's current National Center on the Dissemination of Disability Research (NCDDR).

*Discussion:* It is true that NIDRR supports research on many aspects of employment, participation and community living. Nonetheless, NIDRR believes that a more focused ADA research agenda that is directly associated with the DBTAC program will strengthen research capacity and further improve our understanding about disability and rehabilitation outcomes for individuals with disabilities, particularly how those outcomes can be enhanced through identification of impediments to compliance with the ADA. That said, NIDRR does not intend to fund research that is truly duplicative of current or recent NIDRR-funded studies and projects. Accordingly, NIDRR encourages applicants to become familiar with NIDRR's current and recent research portfolio to avoid proposing redundant studies.

NIDRR also does not believe that the DBTAC CORC will duplicate the efforts of the NCDDR. NCDDR supports the translation and dissemination of much of the research supported by NIDRR, but it has a specific work scope defined in its grant. (For more information about NCDDR go to *http://www.ncddr.org.*) The NCDDR is not positioned to take on new research or products from an innovative and targeted program such as the DBTAC program.

*Changes:* None.

*Comment:* One commenter asked NIDRR to clarify whether ''rigorous research activities'' include the assessment of technical assistance, training, and information dissemination outcomes in addition to more traditional intervention research.

*Discussion:* It is not entirely clear what the commenter means by traditional intervention research. NIDRR intends that all DBTAC research activities, including components that address the assessment of technical assistance, training, and information dissemination outcomes, will adhere to research standards and use scientifically based approaches consistent with defensible methodological standards. Paragraph (g) of the DBTACs priority requires that DBTACs adhere to standards and guidelines that are consistent with evidence-based practices for research dissemination and evaluation (see *http://www.cebm.net*, *http://www.cochrane.org*, *www.campbellcollaboration.org/guide.flow.pdf*, *http://www.ngc.gov, http://www.science.gov*).

*Changes:* None.

*Comment:* One commenter recommended that the priorities include indicators, such as process measures, in addition to outcome measures.

*Discussion:* NIDRR has organized the DBTACs and DBTAC CORC priority requirements around programmatic outcomes. We believe that this approach supports the assessment of programmatic outcomes and is consistent with the logic model framework, as outlined in the Plan, as well as the Department of Education's desire to enhance accountability and demonstrate results. While NIDRR recognizes the value of indicators such as process measures, it does not believe that it is necessary to require all applicants to establish indicators.

*Changes:* None.

*Other*

*Comment:* Several commenters asked what is meant by the term ''technology'', as it is used in the priorities, and wanted to know whether we intend for the term to refer to assistive technology (AT), information technology, or both.

*Discussion:* As used in the DBTACs and DBTAC CORC priorities, NIDRR intends for the term ''technology'' to refer to AT, as defined in the Rehabilitation Act of 1973, as amended. The term refers to AT devices or AT services, and may include IT. According to section 7(3) of the Rehabilitation Act, the term AT device has the meaning given to the term in section 3 of the Assistive Technology Act of 1998; that is, ''any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.''

The term AT service, as, as defined in section 7(4) of the Rehabilitation Act means ''any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive device'' (see Section 3(5) of the Assistive Technology Act of 1998 (29 U.S.C. 3002) for more information on services that are considered AT services). As used in these priorities, therefore, the term technology could refer to information technology as long as the information technology would be considered AT, as defined in the Rehabilitation Act of 1973, as amended.

*Changes:* None.

*Comment:* One commenter expressed difficulty understanding the relationship between employment outcomes and the ADA. Another commenter recommended that the priority be revised to state: ''NIDRR recognizes that many elements of ADA implementation impact employment outcomes * * *''.

*Discussion:* NIDRR believes that many elements of ADA implementation affect employment outcomes for individuals with disabilities. Grantees under the DBTACs priority are required to develop research proposals with research questions or hypotheses that are consistent with standard research practices. Accordingly, grantees can propose research questions or hypotheses that are designed to examine the relationship between the ADA and employment outcomes for individuals with disabilities.

*Changes:* None.

*Comment:* One commenter recommended that the DBTACs priority require DBTACs to partner with other federally funded programs, such as the Ticket to Work Program.

*Discussion:* The DBTACs priority requires each DBTAC to collaborate with the DBTAC CORC and other DBTACs. The priority also requires DBTACs to develop and apply effective coordination strategies within the network of relevant NIDRR RRTCs, Rehabilitation Engineering Research Centers, DRRPs, NIDRR-funded knowledge translation and dissemination centers, employers, industries, community entities, and federally funded programs, such as the Rehabilitation Services Administration

AT State grants. NIDRR does not believe that it is appropriate to require grantees to participate in the type of partnership activities recommended by the commenter. That said, nothing in the priority prohibits an applicant from proposing these partnership activities.

*Changes:* None.

*Comment:* One commenter stated that paragraph (b) of the proposed DBTACs priority is shortsighted in that it does not recognize other important aspects of full implementation of the ADA, including facility accessibility, accessible transportation, and effective communication. According to the commenter, because all aspects of ADA implementation are addressed in the outcome described in paragraph (a) of the proposed priority, paragraph (b) should be removed.

*Discussion:* NIDRR believes that the outcome described in paragraph (b) of the DBTACs priority is qualitatively different from the outcome described in paragraph (a) of the priority. The outcome described in paragraph (a) is broadly identified as an improved understanding about the rights and responsibilities under the ADA, as well as developments in case law, policy, and implementation. In paragraph (b), NIDRR intends to emphasize improved employment outcomes for individuals with disabilities in high growth industries. NIDRR believes it is necessary to emphasize this outcome to ensure that the DBTAC activities adequately address those industries that are potentially best situated to increase employment options and opportunities for individuals with disabilities.

*Changes:* None.

*Comment:* One commenter recommended that existing DBTAC databases and document portals be consolidated under the control of the DBTAC CORC and that paragraph (a) of the proposed DBTAC CORC priority be revised to reflect this recommendation.

*Discussion:* NIDRR agrees with this commenter, and intends for the DBTAC CORC to serve as a national repository for DBTAC information and products, including data products and the content of previously funded ADA document portals and Web sites, and project and national DBTAC databases. For example, NIDRR intends for the DBTAC CORC to maintain the contents and functions of the ADA Document Portal and National DBTAC databases that currently exist, such as the ADA Impact Measurement System (AIMS) project databases and the national DBTAC Outcomes Databases, and other regional and national project databases.

*Changes:* We have revised paragraph (a) of the DBTAC CORC priority to require the DBTAC CORC to serve as the central repository for DBTAC information and products, and to be responsible for the maintenance of data products and the content of previously funded ADA document portals and Web sites, and project and national DBTAC databases.

*Comment:* One commenter recommended that NIDRR revise the outcome in paragraph (i) of the DBTAC CORC priority to focus on the ADA instead of ''the state of the science.'' The commenter also recommended that NIDRR revise the priority to require a ''state of the ADA conference,'' and to encourage broad attendance at the conference by NIDRR grantees involved in applicable research as well as practitioners from the field, Federal agencies, and consumers.

*Discussion:* NIDRR believes that the annual conference hosted by the DBTAC CORC should focus on an enhanced understanding of the ''state of the science,'' because a focus on the ''state of the science'' is more comprehensive than a narrow focus on the state of the ADA. As used in the DBTAC CORC priority, NIDRR intends for the term ''state of the science'' to refer to the current state of scientific evidence available on particular topics, such as those identified in the priority or those topics relating to all titles of the ADA, and the evaluation of the latest research findings in these topic areas. With regard to the commenter's second point, nothing in the priority precludes the DBTAC CORC from inviting the groups identified by the commenter to the annual conference it will host in accordance with paragraph (i) of the priority.

*Changes:* None.

*Comment:* One commenter recommended that NIDRR require all centers funded under the DBTACs priority to identify themselves with names that include the term ''DBTAC'' as the primary identifier. The commenter noted that it is difficult to locate DBTAC resources without the use of a common name. Another commenter requested that NIDRR change the name of the centers to be supported under the DBTACs priority, because adding a research focus to the priority is not consistent with the DBTAC history of service and is misleading to the public.

*Discussion:* NIDRR agrees that a common name for DBTAC grantees would be beneficial. NIDRR also agrees that the DBTAC program has a long and distinguished history of services and wishes to maintain this tradition, as well as the DBTAC program name. Accordingly, NIDRR expects all entities funded under the DBTACs priority to support name recognition for the DBTAC program by identifying themselves as DBTAC projects with the term DBTAC prominently displayed in their project names. NIDRR expects grantees to adopt project names that use the following format: DBTAC—[Insert entity title or project name, region or other identifying information].

NIDRR does not agree that the DBTAC name should be changed. The DBTACs priority requires that the core functions of the DBTAC program be maintained. Adding the research component to the priority neither detracts from nor diminishes the quality of service to be provided by the DBTACs. Instead, NIDRR believes that requiring research-related activities will help to ensure that services and interventions delivered by DBTACs are the most effective and relevant to meet the needs of the individuals and communities they serve.

*Changes:* NIDRR has revised the DBTACs priority by adding paragraph (j) to clarify that a desired outcome of the project is to improve awareness, outreach, and access to DBTAC services by enhancing the name recognition of the DBTAC program. Specifically, the newly added paragraph requires grantees to use the term DBTAC as a primary identifier in project titles and specifies the naming convention format that must be used by all DBTACs.

*Comment:* One commenter asked if the DBTAC CORC will be the only entity producing evidence reports. The commenter also asked what DBTAC data the DBTAC CORC will analyze.

*Discussion:* The DBTAC CORC priority requires the DBTAC CORC to produce evidence reports. There is nothing in either the DBTACs or DBTAC CORC priorities to preclude regional DBTACs from generating or producing their own evidence reports provided that those reports are consistent with their project activities.

With regard to the commenter's second point, the DBTAC CORC is responsible for conducting rigorous analyses of regional DBTAC data to accomplish the programmatic outcomes identified in the DBTAC CORC priority. The regional DBTACs and DBTAC CORC are required to collaborate on identification of data analysis needs.

*Changes:* None.

*Comment:* One commenter suggested that it would be a conflict of interest for a single entity to be awarded both a regional DBTAC grant and the DBTAC CORC grant, and encouraged NIDRR to fund separate entities under these priorities.

*Discussion:* NIDRR intends to conduct an open competition for the DBTAC

CORC, and will not prohibit applicants for a regional DBTAC from applying under the DBTAC CORC competition. NIDRR intends to award DBTAC CORC funds under a cooperative agreement that will outline specifications for administration of the required DBTAC CORC activities. NIDRR will closely examine conflict of interest issues.

*Changes:* None.

*Comment:* One commenter stated that many DBTACs maintain bilingual staff in order to address the needs of individuals who do not speak English, and suggested that a shift in focus may eliminate the DBTAC's ability to address the needs of non-English speaking populations.

*Discussion:* The DBTACs priority does not prohibit projects from addressing the needs of non-English speaking populations. In accordance with section 350.40 of the Disability and Rehabilitation Research Projects and Centers Program regulations, all applicants are required to demonstrate in their application how they will meet the needs of minority populations; this includes linguistic minorities. Additionally, in accordance with Federal law, the application must outline non-discrimination hiring policies. The DBTACs priority in no way prevents or prohibits projects from maintaining bilingual staff.

*Changes:* None.

*Comment:* None.

*Discussion:* NIDRR believes that DBTAC and DBTAC CORC collaboration with other relevant federally funded programs will enhance the coordination of information dissemination and promote the use of research findings across relevant Federal programs.

*Changes:* We have revised proposed paragraph (g) of the DBTACs priority (paragraph (h) in the final priority announced in this NFP) and paragraph (f) of the DBTACs CORC priority to include other federally funded programs, such as the Rehabilitation Services Administration (RSA) Assistive Technology (AT) State grants, among the entities with which the DBTACs and the DBTAC CORC must coordinate.

**Note:** This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

**Note:** This NFP is in concert with President George W. Bush's New Freedom Initiative (NFI) and the Plan. The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

*Disability Business Technical Assistance Centers (DBTACs) Priority:* The Assistant Secretary for Special Education and Rehabilitative Services establishes, under its Disability Rehabilitation Research Projects program, a priority for the funding of 10 Disability and Business Technical Assistance Centers (DBTACs), 1 within each of the 10 U.S. Department of Education regions. Each DBTAC must be designed to contribute to the following outcomes:

(a) Improved understanding about rights and responsibilities under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* (ADA), as well as developments in case law, policy, and implementation through rigorous research and technical assistance activities.

(b) Improved employment outcomes for individuals with disabilities by conducting activities that help to increase accommodations, access to technology, and supports in the workplace, especially in high growth industries.

(c) Enhanced ADA information dissemination, awareness, and referral activities by establishing effective, coordinated local, regional, and national resource networks. The DBTAC will contribute to this outcome by, among other activities, partnering with the DBTAC Coordination, Outreach and Research Center (DBTAC CORC) and other regional DBTACs to develop, implement and evaluate these networks.

(d) Enhanced capacity of entities at the local and State levels and within specific industries to provide technical assistance and training on the ADA through dissemination of information that promotes awareness of the ADA.

(e) Identification of impediments to compliance with the ADA and individuals' access to technology, postsecondary education, and the workforce, and of tested solutions and innovative approaches for eliminating these impediments by conducting targeted, rigorous research activities in at least one of the following areas: Employment, technology and postsecondary education, technology and school-to-work transition, and participation and community living. Research activities require, in the first year of the project period, submission of a preliminary research proposal (i.e., topic, research hypotheses/questions, research design and methodology, and expected outcomes) to the DBTAC CORC for review; the CORC will provide technical assistance for the regional DBTAC research activities and help to identify areas for potential collaborative research. Beginning in the second year of the project period, DBTAC grantees are required to conduct rigorous, high quality research.

(f) Improved research capacity through scientifically-based data collection and analysis leading to identification of research topics and DBTAC CORC development of a preliminary research agenda for consideration by the DBTACs. Grantees must submit their program data and findings to the DBTAC CORC in order to assist the DBTAC CORC with producing evidence reports, identifying gaps in the research agenda where new or additional research is warranted, conducting relevant research, assisting with enhanced understanding of ADA compliance and implementation issues on a national level, and generating topics for a national DBTAC research agenda. The specific research to be conducted by the individual DBTAC will be determined through coordination between the DBTAC and the DBTAC CORC.

(g) Enhanced quality and relevance of information, and dissemination of research-based information by adhering to standards and guidelines that are

consistent with evidence-based practices for research dissemination and evaluation (see *http://www.cebm.net, http://www.cochrane.org, www.campbellcollaboration.org/guide.flow.pdf, http://www.ngc.gov, http://www.science.gov/*), and through coordination with and support of the DBTAC's CORC Review Board.

(h) Improved technical assistance and research capacity through development and application of effective coordination strategies within the network of relevant NIDRR Rehabilitation Research and Training Centers, Rehabilitation Engineering Research Centers, Disability Rehabilitation Research Projects, NIDRR-funded knowledge translation and dissemination centers, employers, industries, community entities, and federally funded programs, such as the Rehabilitation Services Administration (RSA) Assistive Technology (AT) State grants.

(i) Improved knowledge about the provision of ADA and employment-related technical assistance, implementation of the ADA, and employment outcomes through submission of region-specific information and data to the DBTAC CORC for analysis and reporting.

(j) Improved awareness, outreach, and access to technical assistance through clear identification of DBTAC projects leading to enhanced name recognition, including use of a primary identifier (i.e., DBTAC) in project titles. All grantees must provide for the prominent display of the term DBTAC in their project names using the following format: DBTAC—[insert entity title or project name, region, or other identifying information].

*Disability Business Technical Assistance Center Coordination, Outreach, and Research Center (DBTAC CORC) Priority:* The Assistant Secretary for Special Education and Rehabilitative Services establishes, under its Disability Rehabilitation Research Projects program, a priority for the funding of a Disability Business Technical Assistance Center Coordination, Outreach, and Research Center (DBTAC CORC). The DBTAC CORC must be designed to contribute to the following outcomes:

(a) Improved public access to information relating to the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* (ADA), through development and maintenance of a public Web site that includes relevant information that is of national interest and useful across all DBTAC regions, preparation of documents in a format that meets a government or industry-recognized standard for accessibility, and establishment of a DBTAC database to support regional DBTAC activities. The DBTAC CORC also will serve as the central repository for DBTAC information and products, and will be responsible for the maintenance of data products and the content of previously funded ADA document portals and Web sites, and project and national DBTAC databases.

(b) Improved technical assistance, collaboration, information dissemination, knowledge translation and training materials through a national, coordinated process for developing materials to address topics that are relevant across regions; and use of a CORC Review Board to assist with development and review of collaborative products, and research activities.

(c) Increased research capacity building and high quality research through synthesis and analysis of ADA information and data provided by the regional DBTACs, and reviews of literature and related information from other sources, in order to produce evidence reports, generate topics for the regional DBTAC research activities, identify areas where additional research is warranted, conduct relevant research that is consistent with the research activities being implemented as part of the national DBTAC research agenda, and enhance understanding of ADA compliance and implementation issues on a national level.

(d) Enhanced capacity of regional DBTACs to assist with improving employment outcomes, workplace supports and accommodations, and ADA compliance by producing evidence reports, conducting rigorous analyses of regional DBTAC data, and evaluating products and proposed publications. The DBTAC CORC will contribute to this outcome by (1) establishing a DBTAC CORC Review Board composed of expert advisor(s), a methodology consultant, a research consortium coordinator, and research analysts to (i) review regional DBTAC research proposal plans for new research activities, products, and publications; (ii) coordinate potential collaborative research activities; and (iii) conduct systematic reviews of DBTAC research using a set of evidence questions based on scientific studies and standards (see *http://www.cebm.net, http://www.cochrane.org, www.campbellcollaboration.org/guide.flow.pdf, http://www.ngc.gov, http://www.science.gov/*); (2) establishing guidelines for submission of information to the DBTAC CORC by the regional DBTACs; and (3) providing technical assistance to regional DBTACs.

(e) Improved knowledge of and contribution to the state of the science within the subject areas covered by the regional DBTACs by serving as a consultant to regional DBTACs to support research capacity building, facilitating development of a coordinated national research agenda, assisting to identify proposed research activities that are duplicative; identifying potential collaborative research activities; and working cooperatively with regional DBTAC grantees to assist with the development of research topics and activities. The DBTAC CORC will review research proposal plans submitted by regional DBTACs beginning in the first year of the project period for the purpose of providing technical assistance and to assist with development of scientifically based research activities. The specific research to be conducted by the individual DBTAC will be determined through collaboration between the DBTAC and the DBTAC CORC. The DBTAC CORC will provide on-going technical assistance and support to the regional DBTACs to further ensure high quality, rigorous research activities for the duration of the funded activities.

(f) Enhanced coordination of information dissemination on DBTAC activities, research findings, publications, products, and tools through coordination of the network of appropriate NIDRR research projects, including Rehabilitation Research and Training Centers, Disability Rehabilitation Research Projects, Field-Initiated Projects, Rehabilitation Engineering Research Centers, and NIDRR dissemination centers, including the National Rehabilitation Information Center (*www.naric.com*) and the National Center for the Dissemination of Disability Research (*www.ncddr.org*); and other relevant federally supported programs, such as the Rehabilitation Services Administration (RSA) Assistive Technology (AT) State grants.

(g) Increased use of DBTAC-generated products and information by developing strategies to promote the use of developed products and improved relevance and quality of the products through assessment of their effectiveness and impact on practice and policy.

(h) Increased application of research findings and products through translation of DBTAC evidence reports into practice guidelines, quality improvement products, and technical assistance tools.

(i) Enhanced understanding about the state of the science and improved program planning, development, and evaluation by hosting a DBTAC biannual program development and planning meeting beginning in year one of the project period; and an annual conference leading to a report of proceedings in years three through five of the project period.

**Executive Order 12866**

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

*Summary of potential costs and benefits:* The potential costs associated with these final priorities are minimal while the benefits are significant. Grantees may incur some costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these final priorities is that the establishment of new DRRPs will support the President's NFI and will improve the lives of persons with disabilities. The new DRRPs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities.

*Applicable Program Regulations:* 34 CFR part 350.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers 84.133A, Disability Rehabilitation Research Projects)

**Program Authority:** 29 U.S.C. 762(g) and 764(a).

Dated: June 5, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 06–5229 Filed 6–8–06; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Disability Business Technical Assistance Center Coordination, Outreach, and Research Center (DBTAC CORC); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.133A–13

*Dates: Applications Available:* June 9, 2006.

*Deadline for Transmittal of Applications:* August 8, 2006.

*Date of Pre-Application Meeting:* July 13, 2006.

*Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

*Estimated Available Funds:* $850,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** The maximum amount includes direct and indirect costs.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

*Priorities:* NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The Disability Business Technical Assistance Center Coordination, Outreach, and Research Center (DBTAC CORC) priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

*Absolute Priorities:* For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

*General Disability and Rehabilitation Research Projects (DRRP) Requirements* and *Disability Business Technical Assistance Center Coordination, Outreach, and Research Center (DBTAC CORC).*

**Program Authority:** 29 U.S.C. 762(g) and 764(a).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $850,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** The maximum amount includes direct and indirect costs.

*Estimated Number of Awards: 1.*

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–13.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; résumés of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

*Applications Available:* June 9, 2006.

*Deadline for Transmittal of Applications:* August 8, 2006.

*Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on July 13, 2006. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 11 a.m. and 1 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 2 p.m. to 4 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.medley@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects—CFDA Number 84.133A–13 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability*

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:*

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–13), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

*By mail through a commercial carrier:*

U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–13), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–13), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

**Note:** NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on

request to the program contact person listed in this section.

**VIII. Other Information**

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 5, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 06–5228 Filed 6–8–06; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability Rehabilitation Research Projects (DRRPs)—Disability Business Technical Assistance Centers (DBTACs); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.133A–15

*Dates: Applications Available:* June 9, 2006.

*Deadline for Transmittal of Applications:* August 8, 2006.

*Date of Pre-Application Meeting:* July 13, 2006.

*Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

*Estimated Available Funds:* $11,050,000.

*Estimated Range of Awards:* $1,000,000–$1,105,000.

*Estimated Average Size of Awards:* 1,105,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $1,105,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** The maximum amount includes direct and indirect costs.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#DRRP.*

*Priorities:* NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Disability Business Technical Assistance Centers (DBTACs)* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

*Absolute Priorities:* For FY 2006 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

*General Disability and Rehabilitation Research Projects (DRRP) Requirements* and *Disability Business Technical Assistance Centers (DBTACs).*

**Program Authority:** 29 U.S.C. 762(g) and 764(a).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $11,050,000.

*Estimated Range of Awards:* $1,000,000–$1,105,000.

*Estimated Average Size of Awards:* $1,105,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $1,105,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** The maximum amount includes direct and indirect costs.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**III. Eligibility Information**

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required and will be negotiated at the time of the grant award.

**IV. Application and Submission Information**

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED

Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–15.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* June 9, 2006.

*Deadline for Transmittal of Applications:* August 8, 2006.

*Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on July 13, 2006. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 11 a.m. and 1 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 2 p.m. to 4 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.medley@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects-CFDA Number 84.133A–15 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Disability Rehabilitation Research Projects at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition

to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability*

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT,** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:*
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–15), 400 Maryland Avenue, SW., Washington, DC 20202–4260;
or
*By mail through a commercial carrier:*
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133A–15), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–15), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

The Secretary is interested in hypothesis-driven research and development projects. To address this interest it is expected that applicants will articulate goals, objectives, and expected outcomes for the proposed research and development activities. It is critical that proposals describe expected public benefits, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators that will represent the end-result, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of this information is voluntary except where required by the selection criteria listed in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (either ED 424 or Standard Form 424); budget requirements (ED Form 524) and a budget narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

*Applications Available:* June 9, 2006.

*Deadline for Transmittal of Applications:* August 8, 2006.

*Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting to discuss the priorities and to receive information and technical assistance through individual consultation. The pre-application meeting will be held on July 13, 2006. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 11 a.m. and 1 p.m., Washington, DC time. On the same day, NIDRR staff also will be available from 2 p.m. to 4 p.m., by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate on the conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza, room 6027, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *Lynn.medley@ed.gov.*

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Disability Rehabilitation Research Projects-CFDA Number 84.133A'13 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at: *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: June 5, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 06–5230 Filed 6–8–06; 8:45 am]

**BILLING CODE 4000–01–P**

Federal Register

Friday,
June 9, 2006

Part IV

# Department of Education

**Office of Special Education and Rehabilitative Services; Overview Information; State Personnel Development Grants Program; Notice Inviting Applications for New Awards for FY 2005 (to be Awarded in FY 2006); Notice**

## DEPARTMENT OF EDUCATION

### Office of Special Education Programs—State Personnel Development Grants Program

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of final priority for State Personnel Development Grants Program.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Office of Special Education Programs—State Personnel Development Grants Program authorized under the Individuals with Disabilities Education Act (IDEA). This priority may be used for competitions held in fiscal year (FY) 2006 and later years. We take this action to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

**DATES:** *Effective Date:* This priority is effective July 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4019, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7571 or via Internet: *larry.wexler@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:** The purpose of the State Personnel Development Grants (SPDG) program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities. The SPDG program provides a vehicle for helping States to ensure that SEAs and local educational agencies (LEAs) take steps to recruit, hire, and retain highly qualified special education teachers and to ensure that the professional development of special education teachers and other personnel is aimed at providing them with the knowledge and skills to deliver scientifically-based instruction that is likely to improve outcomes for children with disabilities.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on March 2, 2006 (71 FR 10656). The NPP included a background statement that described our rationale for proposing this priority. There are no differences between the NPP and this notice of final priority (NFP).

**Analysis of Comments and Changes**

In response to our invitation in the NPP, two parties submitted comments on the NPP. An analysis of the comments follows.

*Comment:* One commenter asked that the focus of the SPDG be expanded to include the opportunity for a State to work with LEAs to meet the measurable and rigorous targets of its State Performance Plan (SPP). In particular, the commenter requested that SPDG grantees be permitted to use funds to assist LEAs to read and understand data so that they can make improvements in student outcome areas, such as dropout, graduation, post-high school education and suspension and expulsion.

*Discussion:* SEAs applying for assistance under the SPDG program must ensure that their applications are for activities that are allowable under section 654 of the Act and consistent with the final priority established in this NFP. Under this priority, professional development activities, including training to assist personnel (as defined in section 651(b)) to read, understand, and use data as identified by the commenter, are an allowable use of funds if they are conducted for purposes of improving the knowledge and skills of personnel in the use of scientifically based instruction to improve results for students with disabilities, or the recruitment, retention, and training of highly qualified special education teachers. We do not believe that it is necessary to make the change that the commenter is suggesting because under the priority established in this NFP, SPDG program funds can be expended for a range of allowable activities conducted at the SEA and LEA levels relating to personnel preparation and professional development aimed at improving results for students with disabilities.

*Changes:* None.

*Comment:* One commenter supported the priority, but suggested that further examination of the connection between professional development and improved student outcomes is needed. This commenter also requested the opportunity to review any efforts supported by State Improvement Grant (SIG), SPDG or other similar projects that have linked professional development to improved student outcomes.

*Discussion:* As part of their evaluation, projects funded under the SPDG program are encouraged, but not required, to demonstrate a relationship between project activities and student outcomes. SIG and SPDG annual performance reports, which can be found at: *http://www.signetwork.org/reports.shtml#annual,* describe efforts demonstrating a relationship between professional development activities and improved student outcomes.

*Changes:* None.

**Note:** This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

**Priority**

The Assistant Secretary establishes a priority to assist SEAs in reforming and improving their personnel preparation and professional development systems for teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel. The intent of this priority is to improve educational results for children with disabilities through the delivery of high quality instruction and the recruitment, hiring and retention of highly qualified special education teachers.

In order to meet this priority an applicant must demonstrate that the project for which it seeks funding—(1) Provides professional development activities that improve the knowledge and skills of personnel as defined in section 651(b) of IDEA in delivering scientifically-based instruction to meet

the needs of, and improve the performance and achievement of infants, toddlers, preschoolers, and children with disabilities; (2) Implements practices to sustain the knowledge and skills of personnel who have received training in scientifically-based instruction; and (3) Implements strategies that are effective in promoting the recruitment, hiring, and retention of highly qualified special education teachers in accordance with section 602(10) and section 612(a)(14) of IDEA.

Projects funded under this priority must also:

(a) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project;

(b) Budget $4,000 annually for support of the State Personnel Development Grants Program Web site currently administered by the University of Oregon (*http://www.signetwork.org*); and

(c) If a project receiving assistance under this program authority maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

**Executive Order 12866**

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Applicable Program Regulations:* 34 CFR part 300.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.323A State Personnel Development Grants)

**Program Authority:** 20 U.S.C. 1451–1455.

Dated: June 6, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 06–5272 Filed 6–8–06; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services, Overview Information; State Personnel Development Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005 (To Be Awarded in FY 2006)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.323A

*Dates: Applications Available:* June 9, 2006.

*Deadline for Transmittal of Applications*: July 24, 2006.

Deadline for Intergovernmental Review: September 22, 2006.

*Eligible Applicants:* A State educational agency (SEA) of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Current State Program Improvement Grant grantees with multi-year awards who wish to apply for a grant under the State Personnel Development Grants Program may do so, subject to section 651(e) of the Individuals with Disabilities Education Act (IDEA), which prohibits a State requesting a continuation award under the State Improvement Grant Program, as in effect prior to December 3, 2004, from receiving any other award under this program authority for that fiscal year.

*Estimated Available Funds:* $10,000,000.

*Estimated Range of Awards:* In the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, award amounts will be not less than $500,000, nor more than $4,000,000. In the case of an outlying area, awards will be not less than $80,000.

**Note:** Consistent with 34 CFR 75.104(b) of the Education Department General Administrative Regulations (EDGAR), we will reject, without consideration or evaluation, any application that proposes a project funding level for any fiscal year that exceeds the stated maximum award amount of $4,000,000 for that fiscal year.

We will set the amount of each grant after considering—

(1) The amount of funds available for making grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965, as amended (ESEA); and

(6) The use, as appropriate, of scientifically-based research and instruction.

*Estimated Average Size of Awards:* $1,000,000, excluding outlying areas.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Not less than one year and not more than five years.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of this program is to assist SEAs in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

*Priorities:* In accordance with 34 CFR 75.105(b)(2)(v) this priority is from the notice of final priority for this program

published elsewhere in this issue of the **Federal Register**.

*Absolute Priority:* For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

*Priority*

The Assistant Secretary establishes a priority to assist SEAs in reforming and improving their personnel preparation and professional development systems for teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel. The intent of this priority is to improve educational results for children with disabilities through the delivery of high quality instruction and the recruitment, hiring, and retention of highly qualified special education teachers.

In order to meet this priority an applicant must demonstrate that the project for which it seeks funding—(1) Provides professional development activities that improve the knowledge and skills of personnel as defined in section 651(b) of IDEA in delivering scientifically-based instruction to meet the needs of, and improve the performance and achievement of infants, toddlers, preschoolers, and children with disabilities; (2) Implements practices to sustain the knowledge and skills of personnel who have received training in scientifically-based instruction; and (3) Implements strategies that are effective in promoting the recruitment, hiring, and retention of highly qualified special education teachers in accordance with section 602(10) and section 612(a)(14) of IDEA.

Projects funded under this priority must also:

(a) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project;

(b) Budget $4,000 annually for support of the State Personnel Development Grants Program Web site currently administered by the University of Oregon (*http://www.signetwork.org*); and

(c) If a project receiving assistance under this program authority maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

*Statutory Requirements*

State Personnel Development Plan

Applicants must submit a State Personnel Development Plan that identifies and addresses the State and local needs for personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

(a) Is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a)(8) and (9) of IDEA;

(b) Is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(i) Current and anticipated personnel vacancies and shortages; and

(ii) The number of preservice and inservice programs; and

(c) Is integrated and aligned, to the maximum extent possible, with State plans and activities under the ESEA, the Rehabilitation Act of 1973, as amended, and the Higher Education Act of 1965, as amended (HEA);

(d) Describes a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

(i) The nature and extent of the partnership described in accordance with section 652(b) of the IDEA and the respective roles of each member of the partnership, including, if applicable, an individual, entity, or agency other than the SEA that has the responsibility under State law for teacher preparation and certification; and

(ii) How the SEA will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(e) Describes how the strategies and activities the SEA uses to address identified professional development and personnel needs will be coordinated with activities supported with other public resources (including funds provided under Part B and Part C of IDEA and retained for use at the State level for personnel and professional development purposes) and private resources;

(f) Describes how the SEA will align its personnel development plan with the plan and application submitted under sections 1111 and 2112, respectively, of the ESEA;

(g) Describes those strategies the SEA will use to address the identified professional development and personnel needs and how such strategies will be implemented, including—

(i) A description of the programs and activities that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(ii) How such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662 of IDEA;

(h) Provides an assurance that the SEA will provide technical assistance to LEAs to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(i) Provides an assurance that the SEA will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving those children;

(j) Describes how the SEA will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

(k) Describes the steps the SEA will take to ensure that economically disadvantaged and minority children are not taught at higher rates by teachers who are not highly qualified; and

(l) Describes how the SEA will assess, on a regular basis, the extent to which the strategies implemented have been effective in meeting the performance goals described in section 612(a)(15) of IDEA.

*Partnerships*

Required Partners

Applicants shall establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, including—

(a) Not less than one institution of higher education; and

(b) The State agencies responsible for administering Part C of IDEA, early education, child care, and vocational rehabilitation programs.

Other Partners

An SEA shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

(a) The Governor;

(b) Parents of children with disabilities ages birth through 26;

(c) Parents of nondisabled children ages birth through 26;

(d) Individuals with disabilities;

(e) Parent training and information centers or community parent resource

centers funded under sections 671 and 672, respectively, of IDEA;

(f) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(g) Personnel as defined in section 651(b) of IDEA;

(h) The State advisory panel established under Part B of IDEA;

(i) The State interagency coordinating council established under Part C of IDEA;

(j) Individuals knowledgeable about vocational education;

(k) The State agency for higher education;

(l) Noneducational public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(m) Other providers of professional development who work with infants, toddlers, preschoolers, and children with disabilities;

(n) Other individuals; and

(o) In cases where the SEA is not responsible for teacher certification, an individual, entity, or agency responsible for teacher certification as defined in section 652(b)(3) of IDEA.

*Use of funds*

(a) *Professional Development Activities*—Consistent with the final priority, each SEA that receives a State Personnel Development Grant under this program shall use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

(i) Provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

(ii) Use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the ESEA; and

(iii) Encourage collaborative and consultative models of providing early intervention, special education, and related services.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

(i) Into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decision-making, school improvement efforts, and accountability;

(ii) To enhance learning by children with disabilities; and

(iii) To effectively communicate with parents.

(3) Providing professional development activities that—

(i) Improve the knowledge of special education and regular education teachers concerning—

(A) The academic and developmental or functional needs of students with disabilities; or

(B) Effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(ii) Improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, and that—

(A) Provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

(B) Involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

(C) Provide training in methods of—

(I) Positive behavioral interventions and supports to improve student behavior in the classroom;

(II) Scientifically-based reading instruction, including early literacy instruction;

(III) Early and appropriate interventions to identify and help children with disabilities;

(IV) Effective instruction for children with low incidence disabilities;

(V) Successful transitioning to postsecondary opportunities; and

(VI) Using classroom-based techniques to assist children prior to referral for special education;

(D) Provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(E) Provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate individualized education programs (IEPs); and

(F) Provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving those students;

(iii) Train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

(iv) Train early intervention, preschool, and related services providers, and other relevant school personnel, in conducting effective individualized family service plan (IFSP) meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

(i) Teacher mentoring from exemplary special education teachers, principals, or superintendents;

(ii) Induction and support for special education teachers during their first three years of employment as teachers; or

(iii) Incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

(i) Innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101 of the ESEA; and

(ii) The development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

(i) Professional development programs to improve the delivery of early intervention services;

(ii) Initiatives to promote the recruitment and retention of early intervention personnel; and

(iii) Interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) *Other Activities*—Consistent with the final priority, each SEA that receives a State Personnel Development Grant under this program shall use the grant

funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

(i) Special education and regular education teachers have—

(A) The training and information necessary to address the full range of needs of children with disabilities across disability categories; and

(B) The necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

(ii) Special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

(iii) Special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(4) Developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining highly qualified special education teachers.

(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with Title II of the HEA.

(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this priority may lead to the weakening of any State teacher certification or licensing requirement.

(7) Assisting LEAs to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting LEAs in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the ESEA to benefit special education teachers.

(c) *Contracts and Subgrants*—An SEA that receives a grant under this program—

(1) Shall award contracts or subgrants to LEAs, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out the State plan; and

(2) May award contracts and subgrants to other public and private entities, including the lead agency under Part C of IDEA, to carry out the State plan.

(d) *Use of Funds for Professional Development*—An SEA that receives a grant under this program shall use—

(1) Not less than 90 percent of the funds the SEA receives under the grant for any fiscal year for the Professional Development Activities described in paragraph (a); and

(2) Not more than 10 percent of the funds the SEA receives under the grant for any fiscal year for the Other Activities described in paragraph (b).

(e) *Grants to Outlying Areas*—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this program authority.

*Program Authority:* 20 U.S.C. 1451 through 1455.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The notice of final priority for this program published elsewhere in this issue of the **Federal Register**.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Range of Awards:* In the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, award amounts will be not less than $500,000, nor more than $4,000,000. In the case of an outlying area awards will be not less than $80,000.

**Note:** Consistent with 34 CFR 75.104(b) of EDGAR, we will reject without further consideration or evaluation any application that proposes a project funding level for any fiscal year that exceeds the stated maximum award amount of $4,000,000 for that fiscal year.

We will set the amount of each grant after considering—

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2112, respectively, of the ESEA; and

(6) The use, as appropriate, of scientifically-based activities.

*Estimated Average Size of Awards:* $1,000,000, excluding outlying areas.

*Estimated Available Funds:* $10,000,000.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Not less than one year and not more than five years.

## III. Eligibility Information

1. *Eligible Applicants:* An SEA of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Current State Program Improvement Grant grantees with multi-year awards who wish to apply for a grant under the State Personnel Development Grants Program may do so, subject to section 651(e) of IDEA, which prohibits a State requesting to receive a continuation award under the State Improvement

Grant Program, as in effect prior to December 3, 2004, from receiving any other award under this program authority for that fiscal year.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

**IV. Application and Submission Information**

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.323A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 9, 2006.

*Deadline for Transmittal of Applications:* July 24, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: September 22, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

*a. Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2006. The State Personnel Development Grants Program—CFDA Number 84.323A is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the State Personnel Development Grants Program—CFDA Number 84.323A at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and

(3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*b. Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

*By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.323A), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

*By mail through a commercial carrier:* U.S. Department of Education, Application Control Center '' Stop 4260, Attention: (CFDA Number 84.323A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

*c. Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.323A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The goal of the State Personnel Development Grants (SPDG) Program is to reform and improve State systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities. Under the Government Performance and Results Act (GPRA), the Department has developed performance measures to assess the success of the program in meeting these goals. These measures are: (1) The percent of personnel receiving professional development through the SPDG program based on scientific-or evidence-based instructional practices; (2) the percentage of SPDG projects that have implemented personnel development/training activities that are aligned with improvement strategies identified in their State Performance Plan (SPP); (3) the percentage of professional development/training activities provided through the SPDG program based on scientific-or evidence-based instructional/behavioral practices; (4) the percentage of professional development/training activities based on scientific-or evidence-based instructional/behavioral practices, provided through the SPDG program, that are sustained through ongoing and comprehensive practices (*e.g.*, mentoring, coaching, structured guidance, modeling, continuous inquiry, etc.); and (5) in States with SPDG projects that have special education teacher retention as a goal, the Statewide percentage of highly qualified special education teachers in State-identified professional disciplines (*e.g.*, teachers of children with emotional disturbance, deafness, etc.) consistent with sections 602(a)(10) and 612(a)(14) of IDEA, who remain teaching after the first three years of employment.

Each grantee must annually report its performance on these measures in the project's annual performance report to the Department in accordance with section 653(d) of IDEA and 34 CFR 75.590.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4019, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7571.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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Dated: June 6, 2006.

**John H. Hager,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 06–5273 Filed 6–8–06; 8:45 am]

**BILLING CODE 4000–01–P**

Federal Register

Friday,
June 9, 2006

## Part V

# The President

**Proclamation 8029—Flag Day and National Flag Week, 2006**

**Proclamation 8030—Father's Day, 2006**

Federal Register
Vol. 71, No. 111
Friday, June 9, 2006

# Presidential Documents

**Title 3—**

## The President

**Proclamation 8029 of June 6, 2006**

## Flag Day and National Flag Week, 2006

**By the President of the United States of America**

**A Proclamation**

From our Nation's earliest days, Old Glory has stood for America's strength, unity, and liberty. During Flag Day and National Flag Week, we honor this enduring American symbol and celebrate the hope and ideals that it embodies.

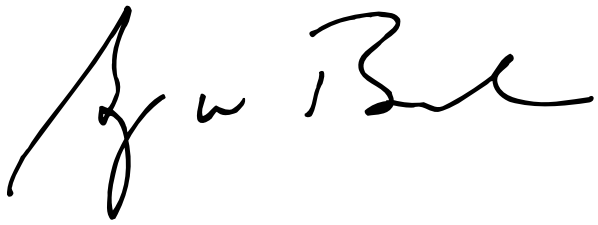
In 1777, the Second Continental Congress established the flag of a young Nation, whose 13 original states were represented in the flag's 13 stars and 13 alternating red and white stripes. Today, the Stars and Stripes commemorate the revolutionary truths of our Declaration of Independence and Constitution. As Americans, we revere freedom and equality, the rights and dignity of every individual, and the supremacy of the rule of law. These fundamental beliefs have guided our country and lifted the fortunes of all Americans, and we have seen their power to transform other nations and deliver hope to people around the world.

During Flag Day and National Flag Week, we also honor the men and women who carry our flag into battle. Through their bravery and sacrifice, they help keep America safe and advance peace and freedom around the globe. By flying the flag, we express our gratitude to these heroes and all those who help ensure that the many blessings of our great country continue for generations to come.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 14, 2006, as Flag Day and the week beginning June 11, 2006, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes from their homes and other suitable places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of June, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–5322
Filed 6–8–06; 8:47 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 8030 of June 6, 2006**

## Father's Day, 2006

**By the President of the United States of America**

**A Proclamation**

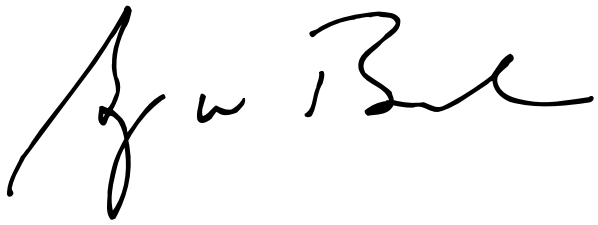
By offering guidance, support, and unconditional love, a father is one of the most important influences in a child's life. On Father's Day, we honor our fathers and celebrate the special bond between a father and a child.

Fathers play a significant role in shaping the character of their children and the future of our country. By spending time with their sons and daughters and listening to their experiences, fathers can have a profound impact on their children's lives. As advisors, role models, and friends, fathers help their children to understand the difference between right and wrong and to recognize how the decisions they make today can affect the rest of their lives. Fathers instill important values and prepare young people for the challenges and opportunities ahead. Through their daily sacrifices, fathers provide a loving and secure home in which their children can grow to become successful adults and good citizens. Their love and dedication inspire the next generation of Americans to achieve their dreams and demonstrate the true spirit of our Nation.

Father's Day also gives us an opportunity to remember the fathers who are currently serving in our Armed Forces. Our Nation is grateful for the courage and sacrifice of the many proud fathers wearing our country's uniform. By advancing freedom and protecting our way of life, these brave individuals are helping to lay the foundation of peace for our children and grandchildren.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 18, 2006, as Father's Day. I encourage all Americans to express admiration and appreciation to fathers for their many contributions to our Nation's children. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day. I also call upon State and local governments and citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of June, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–5323
Filed 6–8–06; 8:47 am]
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# Reader Aids

**Federal Register**

Vol. 71, No. 111

Friday, June 9, 2006

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## FEDERAL REGISTER PAGES AND DATE, JUNE

31069–31914 ..... 1
31915–32264 ..... 2
32265–32414 ..... 5
32415–32800 ..... 6
32801–33146 ..... 7
33147–33374 ..... 8
33375–33592 ..... 9

### 3 CFR

**Proclamations:**
8026 ..... 32799
8027 ..... 32801
8028 ..... 33373
8029 ..... 33589
8030 ..... 33591
**Executive Orders:**
13222 (See Memorandum of May 12, 2006) ..... 31909
**Administrative Orders:**
Memorandums:
Memorandum of May 12, 2006 ..... 31909

### 5 CFR

211 ..... 33375

### 6 CFR

25 ..... 33147

### 7 CFR

205 ..... 32803
272 ..... 33376
273 ..... 33376
301 ..... 33168
319 ..... 33172
979 ..... 33178
1410 ..... 31915
1421 ..... 32415
1427 ..... 32415
1980 ..... 33181
4279 ..... 33181
**Proposed Rules:**
250 ..... 33344
3411 ..... 32479

### 9 CFR

93 ..... 31069
94 ..... 31069
**Proposed Rules:**
160 ..... 31109
161 ..... 31109
162 ..... 31109

### 10 CFR

170 ..... 33190
171 ..... 33190

### 11 CFR

109 ..... 33190

### 12 CFR

229 ..... 32265
**Proposed Rules:**
1732 ..... 31121

### 14 CFR

39 ..... 31070, 31918, 32266, 32268, 32427, 32434, 32807, 32811, 32815, 32818
71 ..... 31919, 31920, 32270, 32271, 32822, 32823, 32824, 32825, 32826
121 ..... 31921
**Proposed Rules:**
39 ..... 31978, 31980, 32484, 32487, 32489, 32491, 32492, 32873, 33260, 33262, 33264, 33267, 33270, 33412
71 ..... 31983, 32876
91 ..... 32877
121 ..... 32877
125 ..... 32877
135 ..... 32877

### 15 CFR

4 ..... 31073
736 ..... 32272, 33211
744 ..... 32272, 33211
902 ..... 33211

### 16 CFR

**Proposed Rules:**
437 ..... 31124
Ch. II ..... 32882

### 17 CFR

200 ..... 33384

### 18 CFR

**Proposed Rules:**
35 ..... 32636, 33102
37 ..... 32636
366 ..... 31125
367 ..... 31125
368 ..... 31125
369 ..... 31125
375 ..... 31125

### 19 CFR

101 ..... 33235
141 ..... 31921
142 ..... 31921
**Proposed Rules:**
12 ..... 31125

### 20 CFR

**Proposed Rules:**
401 ..... 32494
402 ..... 32494

### 21 CFR

50 ..... 32827
73 ..... 31927
520 ..... 33236, 33237
522 ..... 32436
558 ..... 31073
874 ..... 32832

### 22 CFR

62 ..... 33237

### 23 CFR

**Proposed Rules:**
450 ..... 33510
500 ..... 33510

### 24 CFR

115 ..... 33138

203.....33138
320.....32388
**Proposed Rules:**
81.....33144
203.....32392
291.....32392

**26 CFR**

1 .....31074, 31268, 32437, 33239
602.....31268
**Proposed Rules:**
1 .....31128, 31985, 32495, 33273

**27 CFR**

9.....33239

**29 CFR**

458.....31929
4000.....31077
4006.....31077
4007.....31077

**30 CFR**

57.....33387
925.....33243
944.....33249
**Proposed Rules:**
924.....33273
948.....31996

**32 CFR**

199.....31942, 31943
216.....31082

**33 CFR**

100.....32836
165 .....31085, 31088, 31945, 32838, 32839
**Proposed Rules:**
117.....32883
165 .....31999, 32002, 32004

**34 CFR**

304.....32396

**36 CFR**

1151.....33254

**37 CFR**

201.....31089
202.....31089
212.....31089
**Proposed Rules:**
1.....32285
41.....32285

**40 CFR**

51.....31092
52 .....31093, 31097, 32274, 32448
60.....31100, 33388
61.....32276
69.....32450
80.....31947
82.....32840
93.....31092
180 .....31102, 32841, 32846, 32849
372.....32464
**Proposed Rules:**
52 .....31129, 32291, 33413
60.....32885
70.....32006
71.....32006
80.....32015
122.....32887
180 .....32895, 32899, 33416

**42 CFR**

**Proposed Rules:**
100.....33420

**47 CFR**

73.....32853, 32854
**Proposed Rules:**
64.....31131
73.....32909

**48 CFR**

1532.....32282
1552.....32282

**49 CFR**

171.....32244
172.....32244
173.....32244
175.....32244
192.....33402
193.....33402
195.....33402
571.....32855
1544.....31964
1546.....31964
1548.....31964, 33254
**Proposed Rules:**
173.....32909
604.....32496
613.....33510
655.....32298

**50 CFR**

36.....33255
223.....31965
648.....33211
660.....31104
679.....31105
680.....32862
**Proposed Rules:**
17 .....31137, 32496, 32746
622.....33423
660.....33432
665.....32911
679.....33040

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JUNE 9, 2006

**AGRICULTURE DEPARTMENT**
**Agricultural Marketing Service**
Melons grown in South Texas; published 6-8-06
**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Bering Sea and Aleutian Islands king and tanner crabs; fishing capacity reduction program; published 5-10-06
**ENVIRONMENTAL PROTECTION AGENCY**
Air pollutants, hazardous; national emission standards:
Electric utility steam generating units and removal of coal- and oil-fired electric utility steam generating units from Section 112(c) list and mercury performance standards; published 6-9-06
**HOMELAND SECURITY DEPARTMENT**
**Coast Guard**
Drawbridge operations:
Maryland and Virginia; published 4-21-06
**PERSONNEL MANAGEMENT OFFICE**
Veterans' preference:
Veteran definition; individuals discharged or released from active duty, preference eligibility clarification; conformity between veterans' preference laws; published 6-9-06
**SECURITIES AND EXCHANGE COMMISSION**
Emergency conditions; organization and operation plan; published 6-9-06

## RULES GOING INTO EFFECT JUNE 10, 2006

**HEALTH AND HUMAN SERVICES DEPARTMENT**
**Food and Drug Administration**
Radiologic health:
Diagnostic x-ray systems and their major components; performance standard; published 6-10-05
**HOMELAND SECURITY DEPARTMENT**
**Coast Guard**
Regattas and marine parades:
Carolina Cup power boat race, NC; published 5-30-06
Escape from Fort Delaware Triathalon; published 5-4-06

## RULES GOING INTO EFFECT JUNE 11, 2006

**HOMELAND SECURITY DEPARTMENT**
**Coast Guard**
Regattas and marine parades:
Chesapeake Bay Bridges Swim Races, MD; published 4-3-06

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**
**Agricultural Marketing Service**
National Organic Program:
Livestock; pasture access; comments due by 6-12-06; published 4-13-06 [FR 06-03541]
Onions grown in Texas; comments due by 6-15-06; published 5-30-06 [FR E6-08208]
**AGRICULTURE DEPARTMENT**
**Commodity Credit Corporation**
Export programs:
Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]
**AGRICULTURE DEPARTMENT**
**Food and Nutrition Service**
Child nutrition programs:
National School Lunch Program and School Breakfast Program; food safety inspections requirement; comments due by 6-15-06; published 6-15-05 [FR 05-11805]
**AGRICULTURE DEPARTMENT**
**Forest Service**
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Makhnati Island area; subsistence management jurisdiction; comments due by 6-15-06; published 5-1-06 [FR 06-04012]
**AGRICULTURE DEPARTMENT**
**Food Safety and Inspection Service**
Freedom of information and public information:
Meat or poultry product recalls; retail consignees; lists availability; comments due by 6-11-06; published 5-10-06 [FR 06-04394]
**AGRICULTURE DEPARTMENT**
**Grain Inspection, Packers and Stockyards Administration**
Grain inspection:
Rice; fees increase; comments due by 6-12-06; published 4-11-06 [FR 06-03507]
**AGRICULTURE DEPARTMENT**
**Natural Resources Conservation Service**
Conservation operations:
Appeals procedures; comments due by 6-15-06; published 5-16-06 [FR 06-04572]
**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 6-16-06; published 6-1-06 [FR 06-04987]
**DEFENSE DEPARTMENT**
**Defense Acquisition Regulations System**
Acquisition regulations:
Commercial information technology; Buy American Act exemption; comments due by 6-12-06; published 4-12-06 [FR E6-05281]
Component and domestic manufacture definitions; comments due by 6-12-06; published 4-12-06 [FR E6-05282]
**ENERGY DEPARTMENT**
Advanced nuclear power facilities; licensing or litigation delays; standby support; comments due by 6-14-06; published 5-15-06 [FR 06-04398]
**ENERGY DEPARTMENT**
**Energy Efficiency and Renewable Energy Office**
Energy conservation:
Commercial and industrial equipment, energy efficiency program—
Commercial heating, air conditioning, and water heating equipment; efficiency certification, compliance, and enforcement requirements; comments due by 6-12-06; published 4-28-06 [FR 06-03319]
**ENERGY DEPARTMENT**
**Federal Energy Regulatory Commission**
Public Utility Holding Company Act of 2005; implementation:
Financial accounting, reporting, and records retention requirements; comments due by 6-15-06; published 5-16-06 [FR 06-04043]
**ENVIRONMENTAL PROTECTION AGENCY**
Air pollution control:
State operating permits programs—
Missouri; comments due by 6-12-06; published 5-12-06 [FR 06-04432]
Missouri; comments due by 6-12-06; published 5-12-06 [FR 06-04433]
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 6-15-06; published 5-16-06 [FR 06-04515]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
California; comments due by 6-15-06; published 5-16-06 [FR E6-07411]
West Virginia; comments due by 6-12-06; published 5-11-06 [FR E6-07216]
Hazardous waste program authorizations:
Tennessee; comments due by 6-12-06; published 5-11-06 [FR 06-04396]
Pesticide, food, and feed additive petitions:
Sodium metasilicate; comments due by 6-13-06; published 4-14-06 [FR 06-03549]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Emamectin; comments due by 6-12-06; published 4-12-06 [FR 06-03308]

FD&C Blue No. 1 PEG derivatives; comments due by 6-12-06; published 4-12-06 [FR 06-03307]

Pendimethalin; comments due by 6-12-06; published 4-12-06 [FR 06-03460]

**FARM CREDIT ADMINISTRATION**

Farm credit system:

Disclosure to stockholders—

Financial disclosure and reporting requirements; comments due by 6-12-06; published 3-14-06 [FR 06-02382]

**FEDERAL TRADE COMMISSION**

Trade regulation rules:

Business opportunity rule; fraud and unfair or deceptive practices prevention; comments due by 6-16-06; published 4-12-06 [FR 06-03395]

**GENERAL SERVICES ADMINISTRATION**

Federal Management Regulation:

Motor vehicle management; comments due by 6-12-06; published 5-12-06 [FR 06-04430]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Centers for Medicare & Medicaid Services**

Medicare:

Graduate medical education affiliation provisions for teaching hospitals in emergency situations; comments due by 6-12-06; published 4-12-06 [FR 06-03492]

Hospital inpatient prospective payment systems and 2007 FY rates; comments due by 6-12-06; published 4-25-06 [FR 06-03629]

Hospital Inpatient Prospective Payment Systems; 2007 FY occupational mix adjustment to wage index; implementation; comments due by 6-12-06; published 5-17-06 [FR 06-04608]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Atlantic Ocean; Ocean City, MD; comments due by 6-12-06; published 5-11-06 [FR E6-07205]

East River, Mathews, VA; comments due by 6-15-06; published 5-18-06 [FR E6-07532]

James River, Newport News, VA; comments due by 6-15-06; published 5-18-06 [FR E6-07531]

**HOMELAND SECURITY DEPARTMENT**

Immigration:

Arriving aliens in removal proceedings; eligibility to apply for status adjustment and jurisdiction to adjudicate applications for status adjustment; comments due by 6-12-06; published 5-12-06 [FR 06-04429]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Makhnati Island area; subsistence management jurisdiction; comments due by 6-15-06; published 5-1-06 [FR 06-04012]

Endangered and threatened species:

Critical habitat designations—

Suisun thistle and soft bird's-beak; comments due by 6-12-06; published 4-11-06 [FR 06-03343]

Polar bear; comments due by 6-16-06; published 5-17-06 [FR E6-07448]

**JUSTICE DEPARTMENT**

**Executive Office for Immigration Review**

Immigration:

Arriving aliens in removal proceedings; eligibility to apply for status adjustment and jurisdiction to adjudicate applications for status adjustment; comments due by 6-12-06; published 5-12-06 [FR 06-04429]

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

Public availability and use:

Facility locations and hours; comments due by 6-12-06; published 5-12-06 [FR E6-07263]

**PERSONNEL MANAGEMENT OFFICE**

Federal Long Term Care Insurance Program:

Miscellaneous changes, corrections, and clarifications; comments due by 6-13-06; published 4-14-06 [FR 06-03585]

**SMALL BUSINESS ADMINISTRATION**

Small business size standards:

Air traffic control, other airport operations, and other air transportation support activities; comments due by 6-16-06; published 5-17-06 [FR 06-04619]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 6-12-06; published 5-17-06 [FR E6-07477]

Boeing; comments due by 6-12-06; published 4-11-06 [FR 06-03437]

Brantly International, Inc.; comments due by 6-16-06; published 4-17-06 [FR 06-03536]

Cirrus Design Corp.; comments due by 6-15-06; published 5-2-06 [FR E6-06590]

DG Flugzeugbau GmbH; comments due by 6-12-06; published 5-16-06 [FR E6-07394]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 6-16-06; published 5-17-06 [FR E6-07474]

Eurocopter France; comments due by 6-12-06; published 4-13-06 [FR 06-03535]

Fokker; comments due by 6-12-06; published 4-13-06 [FR 06-03480]

General Electric Co.; comments due by 6-16-06; published 4-17-06 [FR E6-05645]

Gulfstream; comments due by 6-12-06; published 4-13-06 [FR 06-03540]

Honeywell; comments due by 6-12-06; published 5-18-06 [FR E6-07559]

McDonnell Douglas; comments due by 6-15-06; published 5-1-06 [FR E6-06497]

Turbomeca S.A.; comments due by 6-16-06; published 4-17-06 [FR E6-05646]

Class E airspace; comments due by 6-12-06; published 5-11-06 [FR 06-04362]

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Engineering and traffic operations:

Construction and maintenance; culvert pipes; alternative types specification; comments due by 6-16-06; published 4-17-06 [FR E6-05651]

**TRANSPORTATION DEPARTMENT**

**Federal Motor Carrier Safety Administration**

Motor carrier safety standards:

Driver qualifications; insulin-treated diabetes mellitus standard; comments due by 6-15-06; published 3-17-06 [FR 06-02417]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Consolidated group regulations—

Foreign common parent; agent; cross-reference; comments due by 6-12-06; published 3-14-06 [FR 06-02437]

**TREASURY DEPARTMENT**

Terrorism Risk Insurance Program:

Terrorism Risk Insurance Extension Act; implementation; comments due by 6-12-06; published 5-11-06 [FR 06-04348]

Terrorism Risk Insurance Extension Act; implementation; cross-reference; comments due by 6-12-06; published 5-11-06 [FR 06-04349]


## LIST OF PUBLIC LAWS

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**S. 1736/P.L. 109–229**

To provide for the participation of employees in the judicial

branch in the Federal leave transfer program for disasters and emergencies. (May 31, 2006; 120 Stat. 390)

**Last List May 31, 2006**

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