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Presidential Documents

Title 3—

The President

Proclamation 7976 of January 27, 2006

National African American History Month, 2006

By the President of the United States of America

A Proclamation

As we celebrate National African American History Month, we recognize the many contributions of African Americans to our country and reinforce our commitment to be a Nation of opportunity and hope for every citizen.

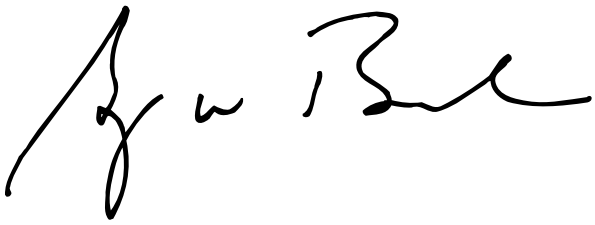
Throughout our history, African Americans have courageously worn our Nation's uniform while defending peace and liberty around the globe. Patriots like Thurgood Marshall and Rosa Parks broke down racial barriers and inspired our Nation to make good on the promise of equal justice under law. Educators like Mary McLeod Bethune and Dr. Frederick Patterson transformed the academic world, with the goal of ensuring that every child has access to a good education. Athletes such as Jesse Owens and Wilma Rudolph and entertainers such as Ossie Davis and Ray Charles have brought pride and joy to generations of Americans. Today, the accomplishments of African Americans in every aspect of our society continue to encourage people to reach as far as their vision and dreams may take them.

African-American organizations have played a vital role in achieving justice and equal rights, and they have helped make communities across our country stronger and better. This year's theme of African American History Month, ''Celebrating Community: A Tribute to Black Fraternal, Social, and Civic Institutions,'' recognizes the African-American groups that have worked to confront injustices and expand opportunities. These organizations believe in the potential and worth of every person, and they have worked to help all Americans receive a quality education, to feed the hungry and house the homeless, to encourage youth to make healthy choices, and to reach out to others in need. By answering the call to love a neighbor as we would like to be loved ourselves, these groups have set a positive example, and we continue to be inspired by their compassion and service to others.

Working together, Federal, State, and local government, community organizations, and individual citizens will continue to foster hope and build a better tomorrow for all our children and grandchildren.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 2006 as National African American History Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate programs and activities that honor the significant contributions African Americans have made to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of January, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV06–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the assessment rate established for the Citrus Administrative Committee (Committee) for the 2005–06 and subsequent fiscal periods from $0.006 to $0.008 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos handled. The Committee locally administers the marketing order which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Assessments upon Florida citrus handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: February 2, 2006. Comments received by April 3, 2006, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges, grapefruit, tangerines, and tangelos grown in Florida, beginning August 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2005–06 and subsequent fiscal periods from $0.006 per 4/5 bushel carton to $0.008 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos grown in Florida.

The Florida citrus marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of oranges, grapefruit, tangerines, and tangelos. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 16, 2005, and unanimously recommended

2005–06 expenditures of $209,000 and an assessment rate of $0.008 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos grown in Florida based on a crop estimate of 24 million 4/5 bushels. In comparison, last year's budgeted expenditures were $300,000. The recommended assessment rate is $0.002 higher than the $0.006 rate currently in effect.

The Committee originally met May 10, 2005, and recommended a budget of $220,000 and that the assessment rate be maintained at $0.006. The Committee had anticipated reduced shipments due to the lingering effects from the hurricanes the industry experienced during the 2004–05 season. However, in October 2005, the industry experienced additional crop loss due to the effects of Hurricane Wilma. Assessable cartons for 2005–06 are now estimated to be 24 million, down from the 36 million originally estimated for the season. Further, the new estimate is close to 28 million cartons under shipments for the 2003–04 season, the most recent season not impacted by hurricanes. Consequently, it is necessary to increase the assessment rate.

The major expenditures recommended by the Committee for the 2005–06 fiscal year include $106,150 for salaries, $25,000 for Manifests–USDA–FDACS, $16,700 for retirement plan, $14,550 for insurance and bonds, and $8,250 for payroll taxes. Budgeted expenses for these items in 2004–05 were $131,000, $25,000, $20,500, $21,000, and $10,600, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, and tangelos. As mentioned earlier, Florida citrus shipments for the year are estimated at 24 million 4/5 bushels, which should provide $192,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve currently total approximately $30,000 and are within the maximum permitted by the order of not to exceed one half of one fiscal period's expenses as stated in § 905.42(a).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–06 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 8,500 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2004–05 season was approximately $11.54 per 4/5 bushel carton, and total fresh shipments for the 2004–05 season were approximately 30.2 million cartons of citrus. Using the average f.o.b. price, at least 70 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production and grower prices reported by the National Agricultural Statistics Service, and the total number of Florida citrus growers, the average annual grower revenue is approximately $87,600. In view of the foregoing, it can be concluded that the majority of handlers and producers of Florida citrus may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2005–06 and subsequent fiscal periods from $0.006 to $0.008 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos. The Committee unanimously recommended 2005–06 expenditures of $209,000 and an assessment rate of $0.008 per 4/5 bushel carton. The recommended assessment rate is $0.002 higher than the rate now in effect. The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2005–06 season is estimated at 24 million 4/5 bushel cartons. Thus, the $0.008 rate should provide $192,000 in assessment income. Income derived from handler assessments, along with interest income, and funds from the Committee's reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2005–06 fiscal year include $106,150 for salaries, $25,000 for Manifests–USDA–FDACS, $16,700 for retirement plan, $14,550 for insurance and bonds, and $8,250 for payroll taxes. Budgeted expenses for these items in 2004–05 were $131,000, $25,000, $20,500, $21,000, and $10,600, respectively.

The Committee originally met May 10, 2005, and recommended a budget of $220,000 and that the assessment rate be maintained at $0.006. The Committee had anticipated reduced shipments due to the lingering effects from the hurricanes the industry experienced during the 2004–05 season. However, in October 2005, the industry experienced additional crop loss due to the effects of Hurricane Wilma. Assessable cartons for 2005–06 are now estimated to be 24 million, down from the 36 million originally estimated for the season. Further, the new estimate is close to 28 million cartons under shipments for the 2003–04 season, the most recent season not impacted by hurricanes. Consequently, it is necessary to increase the assessment rate to meet 2005–06 budget requirements.

The Committee reviewed and unanimously recommended 2005–06 expenditures of $209,000. Prior to arriving at this budget, the Committee considered information from various sources including the Committee's Budget Subcommittee. Alternative assessment rates were discussed based on different estimates of assessable cartons and budget expenses. The assessment rate of $0.008 per 4/5 bushel

carton of assessable oranges, grapefruit, tangerines, and tangelos was then determined by dividing the total recommended budget by the quantity of assessable Florida citrus, estimated at 24 million 4/5 bushel cartons for the 2005–06 season taking into consideration the availability of reserve funds and interest income. This assessment rate will yield approximately $17,000 under anticipated budgeted expenses with the deficit funds to be drawn from reserves and interest income.

A review of historical information and preliminary information pertaining to the upcoming 2005–06 fiscal period indicates that the grower price for the 2005–06 season could range between $1.23 and $7.18 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2005–06 fiscal period as a percentage of total grower revenue could range between .11 and .65 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 16, 2005 meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–06 fiscal period began August 1, 2005, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida citrus handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Tangelos, Tangerines, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2005, an assessment rate of $0.008 per 4/5 bushel carton or equivalent is established for Florida citrus covered under the order.

Dated: January 27, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–947 Filed 1–30–06; 9:06 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23716; Directorate Identifier 2006–NM–008–AD; Amendment 39–14466; AD 2006–03–02]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 and Falcon 2000EX Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dassault Model Falcon 2000 and Falcon 2000EX airplanes. For all airplanes, this AD requires, among other actions, doing an inspection for damage of the feeder cables, and corrective actions if necessary; and installing a protective plate on the feeder cables. For certain airplanes, this AD also requires re-routing the wiring on the cockpit protector; drilling holes in the cockpit protector; and clamping the feeder cables; as applicable. This AD results from a drawing review and further associated inspections that highlighted a potential chafing risk between the third crew member's oxygen mask box and feeder cables routed in the area. We are issuing this AD to prevent chafing between the subject oxygen mask box and the adjacent feeder cables, which could generate smoke or fire in the cockpit that could be fanned by oxygen leakage from the oxygen mask box.

DATES: This AD becomes effective February 16, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 16, 2006.

We must receive comments on this AD by April 3, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on certain Dassault Model Falcon 2000 and Falcon 2000EX airplanes. The EASA advises that a drawing review and further associated inspections have highlighted a potential chafing risk between the third crew member's oxygen mask box, which is optional, installed in the cockpit ceiling, and feeder cables routed in the area. This condition, if not corrected, could generate smoke or fire in the cockpit that could be fanned by oxygen leakage from the oxygen mask box.

Relevant Service Information

Dassault has issued the service bulletins in the following table:

TABLE.—SERVICE BULLETINS

Dassault service bulletin—	Dated—	For model—
F2000EX–92	December 22, 2005	Falcon 2000EX airplanes.
F2000–332	December 22, 2005	Falcon 2000 airplanes.

Both service bulletins describe the following procedures for both airplane models, except as indicated:

• Coating nuts and rivets with epoxy resin if necessary.

• Doing a general visual inspection for damage of the feeder cables coming from the essential and A1 buses, and applicable corrective actions if necessary. The corrective actions include repairing any damaged feeder cable having a damaged conductor, and wrapping with Roundit sheath any damaged feeder cable that does not affect the conductor; as applicable.

• Re-routing the wiring on the cockpit protector, and bonding the applicable supports with epoxy resin (for all Model Falcon 2000 airplanes and for certain Model Falcon 2000EX airplanes).

• Installing a protective plate on the feeder cables.

For certain airplanes, Dassault Service Bulletin F2000EX–92 also describes procedures for drilling holes in the cockpit protector located between the headline and the skin, and clamping the feeder cables coming from the essential, A1, and A2 buses.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service bulletins and issued emergency airworthiness directive 2006–0003, dated January 5, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent chafing between the third crew member's oxygen mask box and feeder cables routed in the area, which could generate smoke or fire in the cockpit that could be fanned by oxygen leakage from the oxygen mask box. This AD requires accomplishing the actions specified in the service information described previously.

Difference Between the EASA's Emergency Airworthiness Directive and This AD

The applicability of the EASA's emergency airworthiness directive 2006–0003 excludes airplanes on which Dassault Modification M2738 (reference Dassault Service Bulletins F2000EX–92 and F2000–332) was done. However, we have not excluded those airplanes in the applicability of this AD; rather, this AD includes a requirement to accomplish the actions specified in those service bulletins, as applicable. This requirement will ensure that the actions specified in the applicable service bulletin and required by this AD are done on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this AD unless an alternative method of compliance is approved. This difference has been coordinated with the EASA.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued, is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–23716; Directorate Identifier 2006–NM–008–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

(65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–03–02 Dassault Aviation: Amendment 39–14466. Docket No. FAA–2006–23716; Directorate Identifier 2006–NM–008–AD.

Effective Date

(a) This AD becomes effective February 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Dassault airplanes in Table 1 of this AD, certificated in any category; equipped with a third crew member passenger-type oxygen mask on the cockpit ceiling; excluding those airplanes on which Dassault Modification M2739 has been done in production.

TABLE 1.—APPLICABILITY

Model	Serial numbers
(1) Falcon 2000 airplanes.	1 through 226 inclusive.
(2) Falcon 2000EX airplanes.	1 through 64 inclusive

Unsafe Condition

(d) This AD results from a drawing review and further associated inspections that highlighted a potential chafing risk between the third crew member's oxygen mask box and feeder cables routed in the area. We are issuing this AD to prevent chafing between the subject oxygen mask box and the adjacent feeder cables, which could generate smoke or fire in the cockpit that could be fanned by oxygen leakage from the oxygen mask box.

Compliance

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

Service Bulletins

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD.

TABLE 2.— SERVICE BULLETINS

Dassault service bulletin—	Dated—	For model—
(1) F2000–332	December 22, 2005	Falcon 2000 airplanes.
(2) F2000EX–92	December 22, 2005	Falcon 2000EX airplanes.

Apply Epoxy Resin, Inspect for Damaged Feeder Cables, Re-Route Wiring, and Install of a Protective Plate

(g) Within 30 days or 30 flight cycles after the effective date of this AD, whichever occurs first, do the applicable actions in Table 3 of this AD in accordance with the service bulletin.

TABLE 3.—REQUIRED ACTIONS

For—	Required actions
(1) All airplanes	Coat nuts and rivets with epoxy resin.
(2) All airplanes	Do a general visual inspection for damage of the feeder cables coming from the essential and A1 buses.

TABLE 3.—REQUIRED ACTIONS—Continued

For—	Required actions
(3) Model Falcon 2000EX airplanes, serial number 6 and 28 through 64 inclusive.	Drill holes in the cockpit protector located between the headline and the skin, and clamp the feeder cables coming from the essential, A1, and A2 buses.
(4) All Model Falcon 2000 airplanes and for Model Falcon 2000EX airplanes, serial numbers 1 through 5 inclusive and 7 through 27 inclusive.	Re-route the wiring on the cockpit protector, and bond the applicable supports with epoxy resin.
(5) All airplanes	Install a protective plate on the feeder cables.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Actions

(h) If any damaged feeder cable is detected during the inspection required by paragraph (g)(2) of this AD, before further flight, do the applicable corrective actions in accordance with the service bulletin.

No Reporting

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

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) The European Aviation Safety Agency's emergency airworthiness directive 2006–0003, dated January 5, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use the applicable service bulletin in Table 4 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 4.—MATERIAL INCORPORATED BY REFERENCE

Dassault service bulletin—	Dated—
(1) F2000–332	December 22, 2005.
(2) F2000EX–92	December 22, 2005.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–824 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23031; Directorate Identifier 2005–NE–41–AD; Amendment 39–14467; AD 2006–03–03]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61 Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61 turbofan engines. This AD requires initial and repetitive borescope inspections for missing HPT rear seal plate locking plugs and damaged locking plug retaining wires, and removal of the engine from service if necessary, based on inspection results. This AD results from two reports of missing HPT rear seal plate locking plugs, damage to the HPT disc, and damage to the remaining locking plug retaining wires. We are issuing this AD to prevent uncontained release of the HPT rear side plate and HPT disc, resulting in damage to the airplane.

DATES: Effective February 16, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 16, 2006.

We must receive any comments on this AD by April 3, 2006.

ADDRESSES: Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- 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.

Contact Rolls-Royce plc, P.O. Box 31, Derby, DE248BJ; UK, telephone: 011–44–1332–242424; fax: 011–44–1332–249936, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the

airworthiness authority for the United Kingdom (U.K.), notified us that an unsafe condition may exist on RR RB211 Trent 500 series turbofan engines that have not incorporated RR Service Bulletin (SB) No. RB.211–72–E767. The CAA advises that during shop visit, some engines were noticed to be missing some of the HPT turbine rear seal plate locking plugs. This resulted in scoring of the HPT disc rear diaphragm and impact damage to the remaining locking plug retaining wires, and could have led to release of the HPT rear seal plate and reduced low-cycle-fatigue life of the HPT disc.

Relevant Service Information

We have reviewed and approved the technical contents of RR Alert SB No. RB.211–72–AE358, Revision 3, dated July 13, 2005, that describes procedures for borescope inspecting the HPT rear seal plate locking plugs and locking plug retaining wires. The CAA classified this as a mandatory SB and issued AD G–2005–0007 R1, dated July 11, 2005, in order to ensure the airworthiness of these RB211 Trent 500 series turbofan engines in the U.K.

Bilateral Airworthiness Agreement

These RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61 series turbofan engines are manufactured in the U.K. and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RR RB211 Trent 500 series turbofan engines of the same type design. We are issuing this AD to prevent uncontained release of the HPT rear side plate and HPT disc, resulting in damage to the airplane. This AD requires initial and repetitive borescope inspections for missing HPT rear seal plate locking plugs and damaged locking plug retaining wires. This AD also requires removing engines from service based on the number of HPT locking plugs with acceptable locking plug retaining wires installed. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–23031; Directorate Identifier 2005–NE–41–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility 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 DMS receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006–03–03 Rolls-Royce plc: Amendment 39–14467. Docket No. FAA–2005–23031; Directorate Identifier 2005–NE–41–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61 turbofan engines that have not incorporated RR Service Bulletin (SB) No. RB.211–72–E767. These engines are installed on, but not limited to, Airbus A340–500 and –600 series airplanes.

Unsafe Condition

(d) This AD results from two reports of missing HPT rear seal plate locking plugs, damage to the HPT disc, and damage to the remaining locking plug retaining wires. We are issuing this AD to prevent uncontained release of the HPT rear side plate and HPT disc, resulting in damage to the airplane.

Compliance

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

Initial Borescope Inspection

(f) Borescope-inspect for missing HPT rear seal plate locking plugs and damaged locking plug retaining wires, between 500 and 1,000 cycles-since-new (CSN) or cycles-since-overhaul where the locking plug wires were replaced, or within 50 cycles after the effective date of this AD, whichever occurs later.

(g) Use paragraphs 3.B.(1)(a) through 3.B.(1)(k)(xi) of the Accomplishment Instructions of RR Alert Service Bulletin No. RB.211–72–AE358, Revision 3, dated July 13, 2005, to do the inspection.

Repetitive Borescope Inspections

(h) Using the criteria and intervals in the following Table 1, repeat the borescope inspection and remove engines from service to inspect the HPT disc.

TABLE 1.—ENGINE REMOVAL CRITERIA

If the number of HPT locking plugs with acceptable locking plug retaining wires installed, determined in paragraph (f) of this AD is:	Then repeat the borescope inspection within:	Remove the engine from service to inspect HPT disc:
(1) Zero or one.	Not applicable	Before further flight.
(2) Two	Not applicable	Within 15 CSLI.
(3) Three or four	100 cycles-since-last-inspection (CSLI) intervals.	Before accumulating 1,100 cycles-since-loss of locking plug(s) or 1,100 CSN, or 1,100 cycles-since-last acceptable inspection, whichever occurs later.
(4) Five	1,000 CSLI intervals	Not applicable.

(i) Use paragraphs 3.B.(1)(a) through 3.B.(1)(k)(xi) of the Accomplishment Instructions of RR Alert Service Bulletin No. RB.211–72–AE358, Revision 3, dated July 13, 2005, to do the inspection.

(j) For Table 1, item (3), if possible, determine when the loss of locking plug(s) occurred by reviewing the engine vibration history. If it is not possible to determine the point of locking plug release, use 1,100 CSN, or 1,100 cycles-since-last acceptable inspection, whichever occurs later.

Alternative Methods of Compliance

(k) 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.

Related Information

(l) United Kingdom Civil Aviation Authority airworthiness directive G–2005–0007 R1, dated July 11, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use the Rolls-Royce plc Alert Service Bulletin and Appendices listed in Table 2 of this AD to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE248BJ; UK, telephone: 011–44–1332–242424; fax: 011–44–1332–249936, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2.—INCORPORATION BY REFERENCE

Alert Service Bulletin No.	Page	Revision	Date
RB.211–72–AE358 Total Pages: 16	ALL	3	July 13, 2005.
Appendix 1 to ASB No. RB.211–72–AE358 Total Pages: 2	ALL	3	July 13, 2005.
Appendix 2 to ASB No. RB.211–72–AE358 Total Pages: 2	ALL	3	July 13, 2005.

Issued in Burlington, Massachusetts, on January 24, 2006.

Peter A. White,

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

[FR Doc. 06–826 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Statement of Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is amending its statement of organization and functions to reflect changes in the Commission's organization as well as editorial and address changes.

DATES: *Effective Date:* February 1, 2006.

ADDRESSES: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Hyun Sun Kim, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7632.

SUPPLEMENTARY INFORMATION: Section 1000.19 describes the new Office of Financial Management, Planning and Evaluation. Section 1000.21 describes the new Office of Compliance and Field Operations. Section 1000.23 describes the new Office of Information and Technology Services. Section 1000.24 describes the new Office of International Programs and Intergovernmental Affairs. The following offices and directorates have been incorporated into the new offices referenced above: the Office of the Secretary, the Office of the Budget, the Office of Planning and Evaluation, the Office of Compliance, the Office of Information Services, the Directorate for Administration and the Directorate for Field Operations.

Section 1000.10 provides that the Commission will annually elect a vice chairman for a term beginning on June 1 and running until such time as another vice chairman is elected. Editorial changes have also been made in various sections and the address of the Commission has been changed from ''Washington, DC 20207'' to ''4330 East West Highway, Bethesda, Maryland 20814'' to reflect the current address.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and Functions (Government Agencies).

■ Therefore, for the reasons set forth in the preamble, revise 16 CFR part 1000 to read as follows:

PART 1000—COMMISSION ORGANIZATION AND FUNCTIONS

Sec.
1000.1 The Commission.
1000.2 Laws administered.
1000.3 Hotline.
1000.4 Commission address.
1000.5 Petitions.
1000.6 Commission decisions and records.
1000.7 Advisory opinions and interpretations of regulations.
1000.8 Meetings and hearings; public notice.
1000.9 Quorum.
1000.10 The Chairman and Vice Chairman.
1000.11 Delegation of functions.
1000.12 Organizational structure.
1000.13 Directives system.
1000.14 Office of the General Counsel.
1000.15 Office of Congressional Relations.
1000.16 Office of the Inspector General.
1000.17 Office of Equal Employment Opportunity and Minority Enterprise.
1000.18 Office of Executive Director.
1000.19 Office of Financial Management, Planning and Evaluation.
1000.20 Office of Information and Public Affairs.
1000.21 Office of Compliance and Field Operations.
1000.22 Office of Human Resources Management.
1000.23 Office of Information and Technology Services.
1000.24 Office of International Programs and Intergovernmental Affairs.
1000.25 Office of Hazard Identification and Reduction.
1000.26 Directorate for Epidemiology.
1000.27 Directorate for Health Sciences.
1000.28 Directorate for Economic Analysis.
1000.29 Directorate for Engineering Sciences.
1000.30 Directorate for Laboratory Sciences.

Authority: 5 U.S.C. 552(a).

§ 1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)). The purposes of the Commission under the CPSA are:

(1) To protect the public against unreasonable risks of injury associated with consumer products;

(2) To assist consumers in evaluating the comparative safety of consumer products;

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(b) The Commission is authorized to consist of five members appointed by the President, by and with the advice and consent of the Senate, for terms of seven years. However, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Public Law 102–389, limited funding to that for three Commissioners for fiscal year 1993 and thereafter.

§ 1000.2 Laws administered.

The Commission administers five acts:

(a) The Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)).

(b) The Flammable Fabrics Act (Pub. L. 90–189, 67 Stat. 111, as amended (15 U.S.C. 1191, *et seq.*)).

(c) The Federal Hazardous Substances Act (Pub. L. 86–613, 74 Stat. 380, as amended (15 U.S.C. 1261, *et seq.*)).

(d) The Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, 84 Stat. 1670, as amended (15 U.S.C. 1471, *et seq.*)).

(e) The Refrigerator Safety Act of 1956 (Pub. L. 84–930, 70 Stat. 953, (15 U.S.C. 1211, *et seq.*)).

§ 1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1–800–638–CPSC (1–800–638–2772).

(b) The Commission also operates a toll-free Hotline by which hearing or speech-impaired persons can communicate with the Commission by teletypewriter. The teletypewriter number for use in all states is 1–800–638–8270.

(c) The Commission also makes available to the public product recall information, its public calendar, and other information through its worldwide Web site at *http://www.cpsc.gov*. The public may also report product hazards or other information to the Commission at its e-mail address: *info@cpsc.gov*.

§ 1000.4 Commission address.

The principal Offices of the Commission are at 4330 East West Highway, Bethesda, Maryland 20814. All written communications with the Commission, including those sent by U.S. Postal Service, private express and messenger should be addressed to the Consumer Product Safety Commission at that address, unless otherwise specifically directed.

§ 1000.5 Petitions.

Any interested person may petition the Commission to issue, amend, or revoke a rule or regulation by submitting a written request to the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Petitions must comply with the Commission's procedure for petitioning for rulemaking at 16 CFR part 1051.

§ 1000.6 Commission decisions and records.

(a) Each decision of the Commission, acting in an official capacity as a collegial body, is recorded in Minutes of Commission meetings or as a separate Record of Commission Action. Copies of Minutes or of a Record of Commission Action may be obtained by e-mail (*cpsc-os@cpsc.gov*) or written request to the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, or may be examined at Commission headquarters. Requests should identify the subject matter of the Commission action and the approximate date of the Commission action, if known.

(b) Other records in the custody of the Commission may be requested by e-mail (*cpsc-os@cpsc.gov*) or in writing from the Office of the Secretary pursuant to the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR part 1015).

§ 1000.7 Advisory opinions and interpretations of regulations.

(a) *Advisory opinions*. Upon written request, the General Counsel provides written advisory opinions interpreting the acts and administrative regulations (*e.g.*, Freedom of Information Act regulations) the Commission administers, provided the request contains sufficient specific factual information upon which to base an opinion. Advisory opinions represent the legal opinions of the General Counsel and may be changed or superseded by the Commission. Requests for advisory opinions should be sent to the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Previously issued advisory opinions are available on the CPSC Web site at *http://www.cpsc.gov/library/foia/advisory/advisory.html*. A copy of a particular previously issued advisory opinion or a copy of an index of such opinions may also be obtained by written request to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

(b) *Interpretations of regulations*. Upon written request, the Assistant Executive Director for Compliance will issue written interpretations of Commission regulations pertaining to the safety standards and the enforcement of those standards, provided the request contains sufficient specific factual information upon which to base an interpretation. Interpretations of regulations represent the interpretations of the staff and may be changed or superseded by the Commission. Requests for such interpretations should be sent to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

§ 1000.8 Meetings and hearings; public notice.

(a) The Commission may meet and exercise all its powers in any place.

(b) Meetings of the Commission are held as ordered by the Commission and, unless otherwise ordered, are held at the principal office of the Commission at 4330 East West Highway, Bethesda, Maryland. Meetings of the Commission for the purpose of jointly conducting the formal business of the agency, including the rendering of official decisions, are generally announced in advance and open to the public, as provided by the Government in the Sunshine Act (5 U.S.C. 552b) and the Commission's Meetings Policy (16 CFR part 1012).

(c) The Commission may conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. It will publish a notice of any proposed hearing in the **Federal Register** and will afford a reasonable opportunity for interested persons to present relevant testimony and data.

(d) Notices of Commission meetings, Commission hearings, and other Commission activities are published in a Public Calendar, as provided in the Commission's Meetings Policy (16 CFR part 1012). The Public Calendar is available on the Commission Web site at *http://www.cpsc.gov*.

§ 1000.9 Quorum.

Three members of the Commission constitute a quorum for the transaction of business. If there are only three members serving on the Commission, two members constitute a quorum. If there are only two members serving on the Commission because of vacancies, two members constitute a quorum, but only for six months from the time the number of members was reduced to two. [**Note:** the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Pub. L. 102–389, limited funding to that for three Commissioners for fiscal year 1993 and thereafter.]

§ 1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal executive officer of the Commission and, subject to the general policies of the Commission and to such regulatory decisions, findings, and determinations as the Commission is by law authorized to make, he or she exercises all of the executive and administrative functions of the Commission.

(b) The Commission shall annually elect a Vice Chairman for a term beginning on June 1. The Vice Chairman shall serve until the election of his or her successor. The Vice Chairman acts in the absence or disability of the Chairman or in case of a vacancy in the Office of the Chairman.

§ 1000.11 Delegation of functions.

Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) authorizes the Commission to delegate any of its functions and powers, other than the power to issue subpoenas, to any officer or employee of the Commission. Delegations are documented in the Commission's Directives System.

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;

(2) Office of Congressional Relations;

(3) Office of the Inspector General;

(4) Office of Equal Employment Opportunity and Minority Enterprise;

(5) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Financial Management, Planning and Evaluation;

(2) Office of Hazard Identification and Reduction;

(3) Office of Information and Public Affairs;

(4) Office of Compliance and Field Operations;

(5) Office of Human Resources Management;

(6) Office of Information and Technology Services;

(7) Office of International Programs and Intergovernmental Affairs.

(c) The following units report directly to the Assistant Executive Director for Hazard Identification and Reduction:

(1) Directorate for Economic Analysis;

(2) Directorate for Epidemiology;

(3) Directorate for Health Sciences;

(4) Directorate for Engineering Sciences;

(5) Directorate for Laboratory Sciences.

§ 1000.13 Directives System.

The Commission maintains a Directives System which contains delegations of authority and descriptions of Commission programs, policies, and procedures. A complete set of directives is available for inspection in the public reading room at Commission headquarters.

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the legal analysis of Commission legislative proposals and comments on relevant legislative proposals originating elsewhere. The Office, in conjunction with the Department of Justice, is responsible for the conduct of all Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the **Federal Register**.

§ 1000.15 Office of Congressional Relations.

The Office of Congressional Relations is the principal contact with the committees and members of Congress and state legislative bodies. It performs liaison duties for the Commission, provides information and assistance to Congress on matters of Commission policy, and coordinates testimony and appearances by Commissioners and agency personnel before Congress.

§ 1000.16 Office of the Inspector General.

The Office of the Inspector General is an independent office established under the provisions of the Inspector General Act of 1978, 5 U.S.C. Appendix, as amended. This Office independently initiates, conducts, supervises, and coordinates audits, operations reviews, and investigations of Commission programs, activities, and operations. The Office also makes recommendations to promote economy, efficiency, and effectiveness within the Commission's programs and operations. The Office receives and investigates complaints or information concerning possible violations of law, rules, or regulations, mismanagement, abuse of authority, and waste of funds. It reviews existing and proposed legislation concerning the economy, efficiency, and effectiveness of such legislation on Commission operations.

§ 1000.17 Office of Equal Employment Opportunity and Minority Enterprise.

The Office of Equal Employment Opportunity and Minority Enterprise is responsible for assuring compliance with all laws and regulations relating to equal employment opportunity. The Office provides advice and assistance to the Chairman and Commission staff on all EEO related issues including the agency Small and Disadvantaged Business Utilization Program. The Office develops agency EEO program policies. The Office manages the discrimination complaint process, including the adjudication of discrimination complaints, and facilitates Affirmative Employment Program (AEP) planning for women, minorities, individuals with disabilities and disabled veterans. The Office plans and executes special emphasis programs and special programs with minority colleges, and EEO, diversity, prevention of sexual harassment and related training. The Office identifies trends, personnel policies and practices that have an impact on EEO and makes recommendations to the Chairman on the effectiveness and efficiency of EEO programs and methods to enhance equal opportunity.

§ 1000.18 Office of Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: the Office of Financial Management, Planning and Evaluation, the Office of Hazard Identification and Reduction, the Office of Information and Public Affairs, the Office of Compliance and Field Operations, the Office of Human Resources Management, the Office of Information and Technology Services, and the Office of International Programs and Intergovernmental Affairs.

§ 1000.19 Office of Financial Management, Planning and Evaluation.

The Office of Financial Management, Planning and Evaluation is responsible for developing the Commission's funds control system, long-range strategic plans, annual performance budgets and operating plans; analysis of major policy and operational issues; performing evaluations and management studies of Commission programs and activities; ensuring that Commission resources are procured and expended as planned and according to purchasing regulations; the review, control, and payment of Commission financial obligations; and, reporting on the use and performance of Commission resources. The Office recommends actions to the Executive Director to enhance the effectiveness of Commission programs and the management of budget, planning and evaluation, financial, and procurement activities. The Office serves as the staff support to the Commission Chief Financial Officer.

§ 1000.20 Office of Information and Public Affairs.

The Office of Information and Public Affairs, which is managed by the Director of the Office, is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also is responsible for implementing the Commission's media relations program nationwide. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news

releases, and organizes Commission news conferences.

§ 1000.21 Office of Compliance and Field Operations.

The Office of Compliance and Field Operations conducts compliance and administrative enforcement activities under all administered acts, provides advice and guidance on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Office's responsibilities also include identifying and addressing safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting administrative litigation. It conducts field enforcement efforts, including providing program guidance, advice, and case guidance to field staff. It enforces the Consumer Product Safety Act reporting requirements. It reviews consumer complaints, conducts inspections and in-depth investigations, and analyzes available data to identify those consumer products containing defects posing a substantial risk of injury or which do not comply with existing safety requirements. The Office negotiates and monitors corrective action plans for products that are defective or fail to comply with specific regulations. It gathers information on product hazards that may be addressed through rulemaking or voluntary standards. The Office develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. The Office of Compliance and Field Operations also assists the Office of Information and Public Affairs in implementing consumer information activities nationwide, including wide-ranging public information and education programs designed to reduce consumer product injuries and deaths, and maintaining liaison with, and providing support to, other components of the Commission and appropriate State and local government offices.

§ 1000.22 Office of Human Resources Management.

The Office of Human Resources Management, which is managed by the Director of the Office, provides human resources management support to the Commission in the areas of recruitment and placement, position classification, training and executive development, employee and labor relations, employee benefits and retirement assistance, employee assistance programs, drug testing, leave administration, disciplinary and adverse actions, grievances and appeals, and performance management.

§ 1000.23 Office of Information and Technology Services.

The Office of Information and Technology Services houses the Commission's Secretariat, which facilitates the preparation of the Commission's agenda; coordinates Commission business at official meetings; maintains the dockets and other materials for the Commission's public and non-public administrative and adjudicative meetings and hearings; prepares and publishes the Public Calendar; maintains the Commission's Injury Information Clearinghouse; issues Commission Orders; provides legal notice of Commission decisions through publication in the **Federal Register**; processes all filings that the Commission receives in paper, electronic and alternative media formats; exercises joint responsibility with the Office of the General Counsel for interpretation and application of the Privacy Act, Freedom of Information Act, and the Government in the Sunshine Act; prepares reports required by these acts; and maintains and manages all official Commission records including those pertaining to continuing guarantees of compliance with applicable standards of flammability under the Flammable Fabrics Act filed with the Commission. The Secretary is the agency's Chief Freedom of Information Act Officer. The Office of Information and Technology Services is also responsible for the general policy and planning issues related to the dissemination of information by the Commission including, but not limited to, OMB Circular A–130, the Federal Information Security Management Act, the Government Paperwork Elimination Act, Section 508 of the Americans with Disabilities Act, and the E-Government Act under the President's Management Agenda; the design, implementation and support of the Commission's information technology system needs; maintaining and/or providing access to administrative applications for the Commission's business processes such as payroll, accounting, personnel, budget, information management and work tracking; administration of the network, telephone systems, and Help Desk. The Office of Information and Technology Services also is responsible for providing the Commission with printing, mail, and copy services, library services, logistical, real and personal property management services; and addressing safety and ergonomic issues in the work place.

§ 1000.24 Office of International Programs and Intergovernmental Affairs.

The Office of International Programs and Intergovernmental Affairs provides a comprehensive and coordinated effort in consumer product safety standards development and implementation at the international, Federal, State and local level. The office conducts activities and creates strategies aimed at ensuring greater import compliance with recognized American safety standards and exportation of CPSC regulatory policies, technologies and methodologies into other jurisdictions. The office also works to harmonize the use of standards worldwide.

§ 1000.25 Office of Hazard Identification and Reduction.

The Office of Hazard Identification and Reduction, under the direction of the Assistant Executive Director for Hazard Identification and Reduction, is responsible for managing the Commission's Hazard Identification and Analysis Program and its Hazard Assessment and Reduction Program. The Office reports to the Executive Director, and has line authority over the Directorates for Epidemiology and Health Sciences, Economic Analysis, Engineering Sciences, and Laboratory Sciences. The Office develops strategies for and implements the agency's operating plans for these two hazard programs. This includes the collection and analysis of data to identify hazards and hazard patterns, the implementation of the Commission's safety standards development projects, the coordination of voluntary standards activities, and providing overall direction and evaluation of projects involving hazard analysis, data collection, emerging hazards, mandatory and voluntary standards, petitions, and labeling rules. The Office assures that relevant technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision.

§ 1000.26 Directorate for Epidemiology.

The Directorate for Epidemiology, managed by the Associate Executive Director for Epidemiology, is responsible for the collection and analysis of data on injuries and deaths associated with consumer products. The Directorate has two divisions: the Data Systems Division and the Hazard Analysis Division. The Data Systems Division operates the national data collection systems which provide the data that serve as the basis for the Commission's estimates of the numbers of deaths and injuries associated with

consumer products. These data systems include the National Electronic Injury Surveillance System, a nationally representative sample of hospital emergency departments; a death certificate file, which contains data obtained from death certificates on deaths associated with consumer products; and the Injury and Potential Injury Incident file, which contains information on, among other things, incidents associated with consumer products, based on news clips, medical examiner reports, hotline reports, Internet complaints, and referrals. The Hazard Analysis Division conducts statistical analysis of these data and conducts epidemiologic studies to estimate the numbers of injuries and deaths associated with various consumer products and to examine factors associated with these injuries and deaths. In addition, staff in the Hazard Analysis Division design special studies, design and analyze data from experiments for testing of consumer products, and provide statistical expertise and advice to Commission staff in support of regulation development.

§ 1000.27 Directorate for Health Sciences.

The Directorate for Health Sciences is managed by the Associate Executive Director for Health Sciences and is responsible for reviewing and evaluating the human health effects and hazards related to consumer products and assessing exposure, uptake and metabolism, including information on population segments at risk. Directorate staff conducts health studies and research in the field of consumer product-related injuries. The Directorate performs risk assessments for chemical, physiological and physical hazards based on methods such as medical injury modeling, and on injury and incident data for mechanical, thermal, chemical and electrical hazards in consumer products. It provides the Commission's primary source of scientific expertise for implementation of the Poison Prevention Packaging Act and the Federal Hazardous Substances Act. The Directorate assists in the development and evaluation of product safety standards and test methods based on scientific and public health principles. It provides support to the Commission's regulatory development and enforcement activities. It manages hazard identification and analysis, and hazard assessment and reduction projects as assigned. The Directorate provides liaison with the National Toxicology Program, the Department of Health and Human Services (including the Food and Drug Administration, the Centers for Disease Control and Prevention, the National Institutes of Health), the Occupational Health and Safety Administration, the Environmental Protection Agency, other Federal agencies and programs, and other organizations concerned with reducing the risk to consumers from exposure to consumer product hazards.

§ 1000.28 Directorate for Economic Analysis.

The Directorate for Economic Analysis, which is managed by the Associate Executive Director for Economic Analysis, is responsible for providing the Commission with advice and information on economic and environmental matters and on the economic, social and environmental effects of Commission actions. It analyzes the potential effects of CPSC actions on consumers and on industries, including effects on competitive structure and commercial practices. The Directorate acquires, compiles, and maintains economic data on movements and trends in the general economy and on the production, distribution, and sales of consumer products and their components to assist in the analysis of CPSC priorities, policies, actions, and rules. It plans and carries out economic surveys of consumers and industries. It studies the costs of accidents and injuries. It evaluates the economic, societal, and environmental impact of product safety rules and standards. It performs regulatory analyses and studies of costs and benefits of CPSC actions as required by the Consumer Product Safety Act, The National Environmental Policy Act, the Regulatory Flexibility Act and other Acts, and by policies established by the Consumer Product Safety Commission. The Directorate manages hazard assessment and reduction projects as assigned.

§ 1000.29 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy for and implementing the Commission's engineering programs. The Directorate manages hazard assessment and reduction projects as assigned by the Office of Hazard Identification and Reduction; provides engineering technical support and product safety assessments for the Office of Compliance and Field Operations; provides engineering, scientific, and technical expertise to the Commission and Commission staff as requested; and provides engineering technical support to other Commission organizations, activities, and programs as needed. The Directorate develops and evaluates product safety standards, product safety tests and test methods, performance criteria, design specifications, and quality control standards for consumer products, based on engineering and scientific methods. It conducts engineering analysis and testing of the safety of consumer products, and evaluates and participates in the development of mandatory and voluntary standards for consumer products including engineering and human factors analyses in support of standards development and product compliance testing. The Directorate performs or monitors research for consumer products in a broad array of engineering disciplines including chemical, electrical, fire protection, human factors, and mechanical engineering. It conducts and coordinates engineering research, testing, and evaluation activities with other Federal agencies, private industry, and consumer interest groups. The Directorate conducts human factors studies and research of consumer product related injuries, including evaluations of labels, signs and symbols, instructions, and other measures intended to address the human component of injury prevention. The Directorate provides technical supervision and direction of engineering activities including tests and analyses conducted in the field.

§ 1000.30 Directorate for Laboratory Sciences.

The Directorate for Laboratory Sciences, which is managed by the Associate Executive Director for Laboratory Sciences, is responsible for conducting engineering analyses and testing of consumer products, supporting the development of voluntary and mandatory standards, and supporting the Agency's compliance activities through product safety assessments. A wide variety of products are tested and evaluated to determine the causes of failure and the hazards presented. Product safety tests involve mechanical, electrical, and combustion engineering, as well as thermal and chemical analyses. Test protocols are developed, test fixtures and setups are designed and fabricated, and tests are conducted following the requirements and guidance of voluntary and mandatory standards and/or using sound engineering and scientific judgment. The Laboratory participates with and supports other agency directorates on multi-disciplinary teams

in the development of voluntary and mandatory standards. The Laboratory coordinates and cooperates with other Federal agencies, private industry, and consumer interest groups by sharing engineering and scientific research, test, and evaluation expertise. Additionally, Corrective Action Plans, proposed by manufacturers to correct a product defect, are tested and evaluated to assure that the proposed changes adequately resolve the problem. Regulated products, such as children's products, sleepwear, and bicycle helmets, are routinely tested and evaluated for compliance with the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act. The Directorate is composed of the Mechanical Engineering Division, the Electrical Engineering Division (which includes flammable fabrics), and the Chemical Division. Overall, the directorate provides engineering, scientific, and other technical expertise to all entities within the Consumer Product Safety Commission.

Dated: January 25, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 06–902 Filed 1–31–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–001]

RIN 1625–AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is changing the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River at Clinton, Iowa. Under the rule, the drawbridge shall open on signal if at least 24 hours advance notice is given from 12:01 a.m., on January 20, 2006 until 9 a.m., on March 1, 2006. This rule allows time for making upgrades to critical mechanical components and to perform scheduled annual maintenance/repairs to the bridge.

DATES: This rule is effective from 12:01 a.m., January 20, 2006, until 9 a.m., March 1, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [CGD08–06–001] and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Commander (obr), Eighth Coast Guard District, maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation or give 30 days notice. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective in less than 30 days after publication in the **Federal Register**. Due to Hurricane Katrina and Hurricane Rita communications and documents were lost causing the inability to publish a NPRM and give 30 days notice because the maintenance has to begin during the winter months while river traffic is very minimal.

Background and Purpose

On June 10, 2005, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad Drawbridge, across the Upper Mississippi River, Mile 518.0, at Clinton, Iowa to open on signal if at least 24 hours advance notice is given to facilitate critical bridge repair and annual maintenance. Advance notice may be given by calling the Clinton Yardmaster's office at (319) 244–3204 at any time; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 710–6829.

The Clinton Railroad Drawbridge navigation span has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted due to the reduced navigation in winter months. Presently, the draw opens on signal for passage of river traffic. The Union Pacific Railroad Company requested the drawbridge be permitted to remain closed-to-navigation from 12:01 a.m., January 20, 2005 until 9 a.m., March 1, 2006 unless 24 hours advance notice is given of the need to open. Winter conditions on the Upper Mississippi River coupled with the closure of Lock and Dam 19, Mile 364.3, Upper Mississippi River, at Keokuk, Iowa will preclude any significant navigation demands for the drawspan opening. The Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River, is located upstream from Lock and Dam 19. Performing maintenance on the bridge during the winter, when the number of vessels likely to be impacted is minimal, is preferred to the bridge closure or advance notification requirements during the navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

Discussion of Changes

This rule temporarily amends 33 CFR part 117, allowing the Clinton Railroad Drawbridge, mile 518.0, to change from an open on demand schedule to one requiring at least 24 hours advance notice.

Regulatory Evaluation

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

The Coast Guard expects that this temporary change to operation of the Clinton Railroad Drawbridge will have minimal economic impact on commercial traffic operating on the Upper Mississippi River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not

have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore this rule is categorically excluded, under figure 2–1, paragraph 32(e) of the Instruction from further environmental documentation.

Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From January 20, 2005 until March 1, 2006, add temporary § 117.T399 to read as follows:

§ 117.T399 Upper Mississippi River.

From 12:01 a.m., January 20, 2006 until 9 a.m., March 1, 2006 the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River at Clinton, Iowa shall open on signal if at least 24 hours notice is given. Notice may be given by calling Clinton Yardmaster's office at (319) 244–3204 at anytime; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 710–6829.

Dated: January 20, 2006.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 06–904 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD 13–06–002]

RIN 1625–AA00

Safety Zone: North Portland Harbor Dredging Operations; Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction of effective date.

SUMMARY: This document contains a correction to effective date of the temporary final rule establishing a temporary safety zone on the Columbia River, in the vicinity of Hayden Island at North Portland Harbor (CGD–13–06–002) published on January 25, 2006, in the **Federal Register** (71 FR 4043).

DATES: This correction is effective February 1, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD13–06–002] and are available for inspection or copying at U. S. Coast Guard Sector Portland, 6767 North Basin Ave. Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Charity Keuter, c/o Captain of the Port Portland, 6767 N. Basin Ave. Portland, Oregon 97217 at 503–240–9301.

SUPPLEMENTARY INFORMATION: On January 25, 2006, the Coast Guard published temporary final rule establishing a temporary safety zone on the Columbia River, in the vicinity of Hayden Island at North Portland Harbor (CGD–13–06–002) in the **Federal Register** (71 FR 4043). In that document the effective date inadvertently stated the year as 2005.

In rule FR Doc. 06–677 published on January 25, 2006, (71 FR 4043) make the following correction. On page 4043, in the first column, change the effective date to read as follows:

DATES: This rule is effective from January 17, 2006 8 a.m. (PST) through March 15, 2006 at 5 p.m. (PST).

Dated: January 25, 2006.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 06–906 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–0557a; FRL–8025–2]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) and Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin material use operations and organic liquid chemical storage and transfer operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 3, 2006 without further notice, unless EPA receives adverse comments by March 3, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [DOCKET NUMBER], 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: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.14	Polyester Resin Material Operations	04/12/05	07/15/05
YSAQMD	2.21	Organic Liquid Storage & Transfer	09/14/05	10/20/05

On August 18, 2005 and November 22, 2005, respectively, EPA found that VCAPCD Rule 74.14 and YSAQMD Rule 2.21 met the completeness criteria in 40 CFR part 51, appendix V. The state's submittal must meet these criteria before EPA's formal review can begin.

B. Are there other versions of these rules?

We approved previous versions of both rules into the SIP. VCAPCD Rule 74.14 was approved and incorporated into the SIP on July 25, 1996 (see 61 **Federal Register** (FR) 38571). We gave a limited approval and limited disapproval to YSAQMD Rule 2.21 when incorporating it into the SIP on January 22, 2004 (see 69 FR 3012). There have been no intervening submittals of these rules since we acted on these prior versions.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. VCAPCD Rule 74.14 sets emission, formulation, work practice requirements for operations using polyester resins to fabricate, rework, repair or touch-up products for commercial, industrial, or military use. YSAQMD Rule 2.21 sets vapor pressure containment and control requirements for operations that store and transfer organic liquid chemicals. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). Both VCAPCD and YSAQMD regulate a 1-hour ozone nonattainment area (see 40 CFR part 81), so each rule must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987;

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook);

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook);

4. ''Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,'' EPA–450/2–78–047, USEPA, December 1978;

5. ''Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks,'' EPA–450/2–77–036, USEPA, December 1977; and,

6. ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems,'' EPA–450/2–78–051, USEPA, December 1978.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. On January 22, 2004, we gave YSAQMD Rule 2.21 a limited approval and limited disapproval because it violated EPA's excess emissions policy and contained elements of executive officer's discretion, an enforceability issue. The present submittal corrected these deficiencies by incorporating new provisions consistent with EPA's excess emissions policy during preventative maintenance activities and by deleting the provisions of the rule allowing executive officer discretion. The TSDs have more information on our evaluation of each rule.

C. EPA Recommendations To Further Improve the Rules

The TSD for VCAPCD 74.14 and YSAQMD Rule 2.21 describe rule revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by March 3, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 3, 2006. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or

significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submittals, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Given this role, absent a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submittal for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submittal, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 22, 2005.

Jane Diamond,

Acting for Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(337)(i)(B) and (c)(342) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(337) * * *

(i) * * *

(B) Ventura County Air Pollution Control District.

(*1*) Rule 74.14, adopted on November 24, 1987 and revised on April 12, 2005.

* * * * *

(c) * * *

(342) New and amended regulations for the following APCDs were submitted on October 20, 2005, by the Governor's designee.

(i) Incorporation by reference.

(A) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.21, adopted on March 23, 1994 and revised on September 14, 2005.

* * * * *

[FR Doc. 06–894 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–0557c; FRL–8024–9]

Interim Final Determination to Stay and/or Defer Sanctions, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay sanctions based on a proposed approval of revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern Yolo-Solano Air Quality Management District Rule 2.21, Organic Liquid Storage and Transfer.

DATES: This interim final determination is effective on February 1, 2006. However, comments will be accepted until March 3, 2006.

ADDRESSES: Submit comments, identified by docket number [DOCKET NUMBER], 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: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

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

I. Background

On January 22, 2004 (69 FR 3012), we published a limited approval and limited disapproval of Yolo-Solano Air Quality Management District Rule 2.21 as adopted locally on June 12, 2002 and submitted by the State on August 6, 2002. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after January 22, 2004 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On September 14, 2005, YSAQMD adopted revisions to Rule 2.21 that were intended to correct the deficiencies identified in our limited disapproval action. On October 20, 2005, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our January 22, 2004 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay sanctions that were triggered by our January 22, 2004 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised YSAQMD Rule 2.21, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay CAA section 179 sanctions associated with YSAQMD Rule 2.21 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has determined preliminarily that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and is indicating through our proposed action that, more likely than not, the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions initially or to keep sanctions applied and in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action 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.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule 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 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of February 1, 2006. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 6, 2006.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 06–893 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–14; MB Docket No. 03–87; RM–10686]

Radio Broadcasting Services; Dilley and Pearsall, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Pearsall Radio Works, Ltd., reallots Channel 237A from Pearsall to Dilley, Texas, and modifies Station KVWG–FM's license accordingly. *See* 68 FR 18177, April 15, 2003. Channel 237A can be allotted to Dilley in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) east at Petitioner's requested site. The reference coordinates for Channel 237A at Dilley are 28–39–55 North Latitude and 99–08–35 West Longitude. Additionally, Channel 227A can be allotted to Pearsall, Texas, as a replacement service with a site restriction of 1.7 kilometers (1.1 miles) west at Petitioner's requested site. The reference coordinates for Channel 227A at Pearsall are 28–53–13 North Latitude and 99–06–40 West Longitude. *See* **SUPPLEMENTARY INFORMATON**, *infra*.

DATES: Effective February 21, 2006. The window period for filing applications for Channel 227A at Pearsall, Texas, will not be opened at time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–87, adopted January 4, 2006, and released January 6, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. § 801(a)(1)(A).

Since Pearsall and Dilley are located within 320 kilometers (199 miles) of the Mexican border, the Commission sought Mexican concurrence for the allotment of Channel 237A at Dilley and Channel 227A at Pearsall, Texas. Mexican concurrence has been received for Channel 227A at Pearsall. However, concurrence of the Mexican government has not yet been received for Channel 237A at Dilley. If a construction permit for Channel 237A at Dilley, Texas, is granted prior to the Commission's receipt of formal concurrence in the allotment by the Mexican Government, the construction permit will include the following condition: ''Use of this allotment is subject to suspension, modification, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico's Secretaria de Communicaciones Y Transportes.''

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 255C2 and adding Channel 255C1, Channel 227A and Channel 237A at Dilley and by removing Channel 237A at Pearsall.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–753 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[FCC 05–211]

Order Staying Effective Date, In the Matter of Children's Television Obligations of Digital Television Broadcasters

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay of effectiveness.

SUMMARY: This document stays three sections of the CFR regarding the requirements for Internet Web site address displays in children's television programming and the core children's programming processing guideline for digital broadcasters in MM Docket 00–167, until 60 days after publication in the **Federal Register** of the Commission's order on reconsideration in that proceeding. These requirements were previously scheduled to become effective on January 1, 2006.

DATES: 47 CFR 73.670(b) and (c) and Note 1, § 73.671(e) and (f), and § 76.225(b) and (c) and Note 1 are stayed effective February 1, 2006, until further notice. The Commission will publish a document in the **Federal Register** announcing the lift of the stay.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418–2120.

SUPPLEMENTARY INFORMATION: On September 9, 2004, the Commission adopted a Report and Order and Further Notice of Proposed Rule Making (''Order'') in MM Docket 00–167. The Order addresses matters related to two areas: The obligation of television licensees to provide educational programming for children and the requirement that television licensees protect children from excessive and inappropriate commercial messages. Some of the rules and policies adopted in the Order apply only to digital broadcasters while others apply to both analog and digital broadcasters as well as cable operators. Most of the rules adopted in the Order were scheduled to take effect on January 1, 2006.

A number of parties petitioned for Commission reconsideration of the Order. Those reconsideration petitions are now pending before the Commission. On September 26, 2005, Viacom, Inc. (Viacom), The Walt Disney Company (Disney), NBC Universal, Inc., and NBC Telemundo License Co. filed a Motion for Extension of Effective Date or, in the Alternative, Administrative Stay with the Commission requesting that the Commission stay the rules or delay their effective date until after the Commission acts on the petitions for reconsideration. In addition, in late September and early October, 2005, the Office of Communication of the United Church of Christ (UCC) and Viacom withdrew their participation in reconsideration petitions and filed separate petitions for judicial review of the Order. UCC filed a petition for review of the Order in the U.S. Court of Appeals for the Sixth Circuit on September 26, 2005. Viacom filed a petition for review of the Order in the U.S. Circuit Court of Appeals for the D.C. Circuit on October 3, 2005. Disney subsequently filed a petition for writ of mandamus with the D.C. Circuit requesting that the Commission be directed to act on the petitions for reconsideration or that the Court stay the rules until the Commission decides the reconsideration petitions. Viacom then also asked the D.C. Circuit to stay the rules until it resolved Viacom's petition for review. On November 16, 2005, the D.C. Circuit transferred both Viacom's petition and Disney's petition to the Sixth Circuit.

Representatives of the broadcast and cable industries and public interest groups interested in children's television issues have been meeting in an attempt to resolve their differences regarding the new rules that are the subject of the litigation. Those parties have now informed the Commission that they have reached an agreement on a recommendation to the Commission that, if adopted, would resolve their concerns with the Commission's rules. The parties' recommendation would maintain with modifications most of the rules adopted by the Commission to promote educational programming for children and to protect children from overcommercialization on television. The Commission will, of course, make an independent determination on the appropriate course of action on reconsideration. However, we greatly appreciate a joint recommendation from these previously adverse interests and will give their recommendation serious consideration. The parties have further recommended that the Commission should stay the effective date of the new rules until 60 days after publication in the **Federal Register** of the Commission's order on reconsideration, a course of action that would give the Commission the time to evaluate the parties' recommendation in the pending reconsideration proceeding and would permit the petitions for judicial review to be held in abeyance and the stay motions now pending before the Sixth Circuit to become moot. In light of that agreement and the issues raised in the pending petitions for reconsideration, we find that the public interest is served by delaying the effective date of the new rules to permit the Commission to act on the petitions for reconsideration and to afford broadcasters and cable operators additional time to come into compliance with the revised children's television requirements, as such requirements may be modified on reconsideration. The Commission will publish a document in the **Federal Register** announcing the lift of the stay.

Accordingly, we are hereby staying the effective date of newly adopted § 73.670(b) and (c) and Note 1, § 73.671(e) and (f) (referred to in the Report and Order and Further Notice of Proposed Rule Making in MM Docket No. 00–167, 19 FCC Rcd 22,943 (2004), as 47 CFR 73.671 Notes 3 and 4), and § 76.225(b) and (c) and Note 1 of the Commission's rules until further notice. We find for good cause that notice and comment are impracticable based on the imminent effective date, the measures that would be required by the industry to comply with the new rules, which may be modified on reconsideration, the broad-based agreement to the stay by children's television advocates and industry representatives, and the fact that we are only temporarily staying the effective date until we resolve the pending petitions for reconsideration.

Congressional Review Act. The Commission will not send a copy of this Order Staying Effective Date to Congress and the General Accounting Office (GAO) pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Commission is only staying the effective date of its rules and this action is not subject to the Congressional Review Act.

Paperwork Reduction. This Order Staying Effective Date does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(ca)(4).).

Accordingly, *it is ordered* that the effective date of 47 CFR 73.670(b) and (c) and Note 1, § 73.671(e) and (f), and § 76.225(b) and (c) and Note 1 as adopted in the Order in the above-captioned proceeding is stayed until further notice.

List of Subjects in 47 CFR Parts 73 and 76

Cable, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–799 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 060124013–6013–01; I.D. 052104F]

RIN 0648–AU18

Endangered and Threatened Species: Final Protective Regulations for Threatened Upper Columbia River Steelhead

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final listing determination.

SUMMARY: We, NOAA's National Marine Fisheries Service (NMFS), are applying the protective regulations for threatened West Coast salmon and steelhead to Upper Columbia River steelhead. Upper Columbia River steelhead were previously listed as endangered in 1997 and were thereby afforded protections against ''take'' under the Endangered Species Act (ESA). On January 5, 2006, the listing status of Upper Columbia River steelhead was changed to threatened. We have determined that the existing protective regulations for threatened West Coast salmonids are necessary and advisable for the conservation of Upper Columbia River steelhead.

DATES: This final determination is effective March 3, 2006.

ADDRESSES: NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Rumsey, NMFS, Northwest Region, Protected Resources Division, at (503) 872–2791, and Marta Nammack, NMFS, Office of Protected Resources, at (301) 713–1401. Reference materials regarding the protective regulations for threatened salmonids are available upon request or on the Internet at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

ESA section 9(a)(1) (16 U.S.C. 1538(a)(1)) prohibits the import/export and ''take'' of, and commercial transactions involving all species listed as endangered. The term ''take'' is defined under the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct'' (Section 3(19), 16 U.S.C. 1532 (19)). In the case of threatened species, section 4(d) of the ESA leaves it to the discretion of the Secretary of Commerce (Secretary) whether, and to what extent, to apply the statutory 9(a)(1) take and other prohibitions, and directs the agency to issue regulations it deems necessary and advisable for the conservation of the species. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a)(1) of the ESA prohibits with respect to endangered species. These 9(a)(1) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Since 1997 we have promulgated a total of 29 ''limits'' to the ESA section 9(a) ''take'' prohibitions for 19 threatened salmon and steelhead Evolutionarily Significant Units (ESUs) (62 FR 38479, July 18, 1997; 65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 67 FR 1116, January 9, 2002). On June 28, 2005, as part of the final listing determinations for 16 ESUs of West Coast salmon, we amended and streamlined the previously promulgated 4(d) protective regulations for threatened salmon and steelhead (70 FR 37160). We finalized an amendment to provide the necessary flexibility to ensure that fisheries and artificial propagation programs are managed consistently with the conservation needs of threatened salmon and steelhead. Under this change the section 4(d) protections apply to natural and hatchery fish with an intact adipose fin, but not to listed hatchery fish that have had their adipose fin removed prior to release into the wild. Additionally, we made several simplifying and clarifying changes to the 4(d) protective regulations including updating an expired limit (§ 223.203(b)(2)), providing a temporary exemption for ongoing research and enhancement activities, and applying the same set of 14 limits to all threatened salmon and steelhead. With respect to steelhead, the amended June 2005 4(d) rule applies to the steelhead ESUs previously listed as threatened: South-Central California, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, and Snake River Basin steelhead.

On August 18, 1997, Upper Columbia River steelhead were listed as an endangered species, and subject to the section 9(a)(1) take prohibitions (62 FR 43937). After conducting an updated status review of listed West Coast steelhead, we proposed in June 2004 to list Upper Columbia River steelhead as threatened (69 FR 33102; June 14, 2004). As part of the proposed listing determination we proposed applying the amended 4(d) protective regulations to Upper Columbia River steelhead. On January 5, 2006, we issued a final determination listing the Upper Columbia River steelhead Distinct Population Segment (DPS) as threatened, and we announced that we would finalize the protective regulations in a subsequent **Federal Register** notice (71 FR 834). In this final rule we are applying the 4(d) protective regulations, as amended in June 2005 (70 FR 37160; June 28, 2005), to Upper Columbia River steelhead.

Comments and Information Received in Response to the Proposed Rule

We solicited public comment on the proposed listing determinations for West Coast salmon and steelhead, and the proposed amendments to the 4(d) protective regulations for a total of 268 days (69 FR 33102, June 14, 2004; 69 FR 53031, August 31, 2004; 69 FR 61348, October 18, 2004; 70 FR 6840, February 9, 2005;70 FR 37219, June 28, 2005; 70 FR 67130, November 4, 2005). We held eight public hearings in the Pacific Northwest, and six public hearings in California, concerning the June 2004 West Coast salmon and steelhead proposed listing determinations and proposed amendments to the 4(d) protective regulations (69 FR 53031, August 31, 2004; 69 FR 54647, September 9, 2004; 69 FR 61348, October 18, 2004). Additionally, pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, we conducted an Environmental Assessment (EA) analyzing the proposed amendments to the 4(d) protective regulations for threatened salmonids. As part of the proposed listing determinations and the proposed amendments to the 4(d) protective regulations, we announced that a draft of the EA was available from NMFS upon request (69 FR at 33172; June 14, 2004). Additionally, on November 15, 2004, we published notice of availability in the **Federal Register**, soliciting comment on the draft EA for an additional 30 days (69 FR 65582).

In response to the various requests for comments on the June 2004 proposed listing determinations and proposed 4(d) protective regulations, we received over 28,250 comments by fax, standard mail, and e-mail. The majority of the comments received were from interested individuals who submitted form letters or form e-mails and addressed general issues not specific to a particular ESU. Comments were also submitted by state and tribal natural resource agencies, fishing groups, environmental

organizations, home builder associations, academic and professional societies, expert advisory panels, farming groups, irrigation groups, and individuals with expertise in Pacific salmonids. The majority of respondents focused on the consideration of hatchery-origin fish in ESA listing determinations, with only a few comments specifically addressing the proposed amendments to the 4(d) protective regulations. We did not receive any comments specifically addressing the proposed application of the amended 4(d) protective regulations to Upper Columbia River steelhead. The reader is referred to the June 28, 2005, final rule for a summary of, and our response to, the public comments received regarding the proposed amendments to the 4(d) protective regulations (70 FR 37160 at 37166).

Description of Protective Regulations Being Afforded Upper Columbia River Steelhead

Consistent with the June 2005 amended 4(d) protective regulations, this final rule applies the ESA section 9(a)(1) take prohibitions (subject to the ''limits'' discussed below) to unmarked anadromous fish with an intact adipose fin that are part of the Upper Columbia River steelhead DPS. (The clipping of adipose fins in juvenile hatchery fish just prior to release into the natural environment is a commonly employed method for the marking of hatchery production). We believe this approach provides needed flexibility to appropriately manage the artificial propagation and directed take of threatened salmon and steelhead for the conservation and recovery of the listed species

The June 2005 amended ESA 4(d) protective regulations simplified the previously promulgated 4(d) rules by applying the same set of 14 ''limits'' to all threatened salmon and steelhead. These limits allow us to exempt certain activities from the take prohibitions, provided that the applicable programs and regulations meet specific conditions to adequately protect the listed species. In this final rule we are applying this same set of 14 limits to Upper Columbia River steelhead. Comprehensive descriptions of each 4(d) limit are contained in ''A Citizen's Guide to the 4(d) Rule'' (available on the Internet at *http://www.nwr.noaa.gov*), and in previously published **Federal Register** notices (65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 69 FR 33102; June 14, 2004; 70 FR 37160, June 28, 2005). These ''limits'' include: activities conducted in accordance with ESA section 10 incidental take authorization (50 CFR 223.203(b)(1)); scientific or artificial propagation activities with pending permit applications at the time of rulemaking (§ 223.203(b)(2)); emergency actions related to injured, stranded, or dead salmonids (§ 223.203(b)(3)); fishery management activities (§ 223.203(b)(4)); hatchery and genetic management programs (§ 223.203(b)(5)); activities in compliance with joint tribal/state plans developed within *United States (U.S.)* v. *Washington* or *U.S.* v. *Oregon* (§ 223.203(b)(6)); scientific research activities permitted or conducted by the states (§ 223.203(b)(7)); state, local, and private habitat restoration activities (§ 223.203(b)(8)); properly screened water diversion devices (§ 223.203(b)(9)); routine road maintenance activities (§ 223.203(b)(10)); certain park pest management activities (§ 223.203(b)(11)); certain municipal, residential, commercial, and industrial development and redevelopment activities (§ 223.203(b)(12)); management activities on state and private lands within the State of Washington (§ 223.203(b)(13)); and activities undertaken consistent with an approved tribal resource management plan (§ 223.204).

Limit § 223.203((b)(2) exempts scientific or artificial propagation activities with pending applications for 4(d) approval. The limit was amended as part of the June 28, 2005, final rule to temporarily exempt such activities from the take prohibitions for 6 months, provided that a complete application for 4(d) approval was received within 60 days of the notice's publication (70 FR 37160). The deadlines associated with this exemption have expired. As we discussed in the proposed rule (69 FR 33102; June 14, 2004), we believe it is in the interest of the conservation and recovery of threatened salmon and steelhead to allow research and enhancement activities to continue uninterrupted while we process the necessary 4(d) approvals. Provided we receive a complete application by April 3, 2006, the take prohibitions will not apply to research and enhancement activities until the application is rejected as insufficient, 4(d) approval is issued, or until March 1, 2007, whichever occurs earliest. The length of this ''grace period'' is necessary because we process applications for 4(d) approval annually.

Classification

National Environmental Policy Act

We conducted an Environmental Assessment (EA) under the NEPA analyzing the proposed application of the amended 4(d) protective regulations to Upper Columbia River steelhead. We solicited comment on the EA as part of the proposed rule, as well as during a subsequent comment period following formal notice in the **Federal Register** of the availability of the draft EA for review. Informed by the comments received, we finalized the EA on June 14, 2005, and issued a Finding of No Significant Impact for the amended 4(d) protective regulations.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule issued under authority of ESA section 4, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule, and is not repeated here. No comments were received regarding that certification. As a result, no final regulatory flexibility analysis for applying the 4(d) protective regulations to Upper Columbia River steelhead contained in this final rule has been prepared.

Executive Order (E.O.) 12866

The extension of the ESA 4(d) protective regulations to Upper Columbia River steelhead addressed in this rule has been determined to be significant for the purposes of E.O. 12866. We prepared a Regulatory Impact Review which was provided to the Office of Management and Budget (OMB) with the publication of the proposed rule.

E.O. 13084 – Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this action. Nonetheless, we intend to inform potentially affected tribal governments and to solicit their input and coordinate on future management actions.

E.O. 13132 - Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule. In fact, this notice provides mechanisms by which NMFS, in the form of 4(d) limits to the statutory take prohibitions, may defer to state and local governments where they provide adequate protections for threatened salmonids, including Upper Columbia River steelhead.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or can be obtained from the Internet at: *http://www.nwr.noaa.gov*.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports.

Dated: January 26, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

■ 2. In § 223.203, paragraphs (a), (b)(1) through (b)(13), and (c), the references in the sections listed in the first column below are revised according to the directions in the second and third columns:

Section	Remove	Add
§ 223.203(a)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(1)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(2)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(3)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(4)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(5)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(6)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(7)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(8)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(9)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(10)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(11)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(12)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(b)(13)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)
§ 223.203(c)	§ 223.102(a)(2) through (a)(21)	§ 223.102(a)

■ 3. In § 223.203, paragraph (b)(2) is revised to read as follows:

§ 223.203 Anadromous fish.

* * * * *

(b) * * *

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to activities specified in an application for ESA 4(d) authorization for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than April 3, 2006. The prohibitions of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of authorization, or March 1, 2007, whichever occurs earliest.

* * * * *

[FR Doc. 06–929 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039-6017-25; I.D. 012706A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,404 nm^2 (8,245 km^2), southeast of Portland, ME, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 3, 2006, through 2400 hours February 17, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 24, 2006, an aerial survey reported a sighting of twenty-seven right whales in the proximity 43° 14′ N. lat. and 68° 46′ W. long. This position lies southeast of Portland, ME. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM zone is bound by the following coordinates:

43° 39′ N., 69° 15′ W. (NW Corner)
43° 39′ N., 68° 09′ W.
42° 49′ N., 68° 09′ W.
42° 49′ N., 69° 15′ W.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: a portion of this DAM zone overlaps the year-round Cashes Ledge Closure Area found at 50 CFR 648.81(d) and the February Cashes Ledge Closure Area for harbor porpoise found at 50 CFR 229.33(a)(6). Due to these closures, sink gillnet gear is prohibited from these portions of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all

variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 3, 2006, through 2400 hours February 17, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: January 27, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–944 Filed 1–27–06; 3:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 21
Wednesday, February 1, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV06–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2006–2007 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which begins on June 1, 2006. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 878,205 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 1,007,886 pounds and 46 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: Comments must be received by March 3, 2006.

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

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2006–2007 marketing year, which begins on June 1, 2006. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with all eight members present, met on October 5, 2005, and recommended salable quantities and allotment percentages for both classes of oil for the 2006–2007 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 878,205 pounds and 45 percent, respectively. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 1,007,886 pounds and 46 percent, respectively.

This rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year, which begins on June 1, 2006. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota. The production area covered by the marketing order currently accounts for

approximately 75 percent of the annual U.S. sales of Scotch spearmint oil.

When the order became effective in 1980, the Far West had 72 percent of the world's sales of Scotch spearmint oil. While the Far West is still the leading producer of Scotch spearmint oil, its share of world sales is now estimated to be about 54 percent. This loss in world sales for the Far West region is directly attributed to the increase in global production. Other factors that have played a significant role include the overall quality of the imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch oil. This, in turn, has made it difficult to balance available supplies with demand and to achieve the Committee's overall goal of stabilizing producer and market prices.

The marketing order has continued to contribute to price and general market stabilization for Far West producers. The Committee, as well as spearmint oil producers and handlers attending the October 5, 2005, meeting estimated that the 2005 producer price of Scotch oil would maintain an average of $12.50 per pound. However, this producer price is below the cost of production for most producers as indicated in a study from the Washington State University Cooperative Extension Service (WSU), which estimates production costs to be between $13.50 and $15.00 per pound.

This low level of producer returns has caused a reduction in acreage. When the order became effective in 1980, the Far West region had 9,702 acres of Scotch spearmint. The Committee estimates that the 2005–2006 acreage of Scotch spearmint will be about 6,096 acres. Based on the reduced Scotch spearmint acreage, the Committee estimates that production for the 2005–2006 marketing season will be about 802,639 pounds.

The Committee recommended the 2006–2007 Scotch spearmint oil salable quantity (878,205 pounds) and allotment percentage (45 percent) utilizing sales estimates for 2006–2007 Scotch spearmint oil as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil sales levels. The Committee is estimating that about 850,000 pounds of Scotch spearmint oil, on average, may be sold during the 2006–2007 marketing year. When considered in conjunction with the estimated carry in of 17,651 pounds of oil on June 1, 2006, the recommended salable quantity of 878,205 pounds results in a total available supply of Scotch spearmint oil next year of about 895,856 pounds.

The recommendation for the 2006–2007 Scotch spearmint oil volume regulation is consistent with the Committee's stated intent of keeping adequate supplies available at all times, while attempting to stabilize prices at a level adequate to sustain the producers. Furthermore, the recommendation takes into consideration the industry's desire to compete with less expensive oil produced outside the regulated area.

Although Native spearmint oil producers are facing market conditions similar to those affecting the Scotch spearmint oil market, the market share is quite different. Over 90 percent of the U.S. production of Native spearmint is produced within the Far West production area. Also, most of the world's supply of Native spearmint is produced in the United States.

The supply and demand characteristics of the current Native spearmint oil market, combined with the stabilizing impact of the marketing order, have kept the price relatively steady between $9.10 and $9.40 per pound over the last five years (2000–2004). The Committee considers this level too low for the majority of producers to maintain viability. The WSU study referenced earlier indicates that the cost of producing Native spearmint oil ranges from $10.26 to $10.92 per pound.

Similar to Scotch, the low level of producer returns has also caused a reduction in Native spearmint acreage. When the order became effective in 1980, the Far West region had 12,153 acres of Native spearmint. The Committee estimates that the 2005–2006 acreage of Native spearmint is about 5,195 acres. Based on the reduced Native spearmint acreage, the Committee estimates that production for the 2005–2006 marketing season will be about 650,234 pounds.

The Committee recommended the 2006–2007 Native spearmint oil salable quantity (1,007,886 pounds) and allotment percentage (46 percent) utilizing sales estimates for 2006–2007 Native oil as provided by several of the industry's handlers, as well as historical and current Native oil sales levels. The Committee is estimating that about 1,062,500 pounds of Native spearmint oil, on average, may be sold during the 2006–2007 marketing year. When considered in conjunction with the estimated carry-in of 50,000 pounds of oil on June 1, 2006, the recommended salable quantity of 1,007,886 pounds results in a total available supply of Native spearmint oil next year of about 1,057,886 pounds.

The Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices since the order's inception (1980–2004) have generally stabilized at an average price of $9.84 per pound for Native spearmint oil and $12.80 per pound for Scotch spearmint oil.

The Committee based its recommendation for the proposed salable quantity and allotment percentage for each class of spearmint oil for the 2006–2007 marketing year on the information discussed above, as well as the data outlined below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 2006—17,651 pounds. This figure is the difference between the revised 2005–2006 marketing year total available supply of 922,651 pounds and the estimated 2005–2006 marketing year trade demand of 905,000 pounds.

(B) Estimated trade demand for the 2006–2007 marketing year—850,000 pounds. This figure is based on input from producers at five Scotch spearmint oil production area meetings held in September 2005, as well as estimates provided by handlers and other meeting participants at the October 5, 2005, meeting. The average estimated trade demand provided at the five production area meetings was 850,500 pounds, whereas the average handler trade demand ranged from 750,000 to 900,000 pounds. The average of sales over the last five years was 736,991 pounds.

(C) Salable quantity required from the 2006–2007 marketing year production—832,349 pounds. This figure is the difference between the estimated 2006–2007 marketing year trade demand (850,000 pounds) and the estimated carry-in on June 1, 2006 (17,651 pounds).

(D) Total estimated allotment base for the 2006–2007 marketing year—1,951,567 pounds. This figure

represents a one-percent increase over the revised 2005–2006 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—42.7 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 percent. This recommendation is based on the Committee's determination that the computed 42.7 percent would not adequately supply the potential 2006–2007 market.

(G) The Committee's recommended salable quantity—878,205 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2006–2007 marketing year—895,856 pounds. This figure is the sum of the 2006–2007 recommended salable quantity (878,205 pounds) and the estimated carry-in on June 1, 2006 (17,651 pounds).

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2006—50,000 pounds. The Committee's estimated carry-in reflects anticipated increases to the salable quantity and allotment percentage that may be needed to meet demand in 2005–2006.

(B) Estimated trade demand for the 2006–2007 marketing year—1,062,500 pounds. This figure is based on input from producers at the six Native spearmint oil production area meetings held in September 2005, as well as estimates provided by handlers and other meeting participants at the October 5, 2005, meeting. The average estimated trade demand provided at the six production area meetings was 1,062,500 pounds, whereas the average handler estimate was 1,050,000 pounds.

(C) Salable quantity required from the 2006–2007 marketing year production—1,012,500 pounds. This figure is the difference between the estimated 2006–2007 marketing year trade demand (1,062,500 pounds) and the estimated carry-in on June 1, 2006 (50,000 pounds).

(D) Total estimated allotment base for the 2006–2007 marketing year—2,191,056 pounds. This figure represents a one percent increase over the revised 2005–2006 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—46.2 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—46 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the six production area meetings (46.4 percent), and input from producers and handlers at the October 5, 2005, meeting.

(G) The Committee's recommended salable quantity—1,007,886 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2006–2007 marketing year—1,057,886 pounds. This figure is the sum of the 2006–2007 recommended salable quantity (1,007,886 pounds) and the estimated carry-in on June 1, 2006 (50,000 pounds).

The salable quantity is the total quantity of each class of spearmint oil, which handlers may purchase from, or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 878,205 pounds and 45 percent, and 1,007,886 pounds and 46 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and the anticipated supply and trade demand during the 2006–2007 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil, which may develop during the marketing year, can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2006–2007 marketing year may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool until November 1, 2006.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2006–2007 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2006–2007 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2006–2007 season in order to meet anticipated market demand.

Initial Regulatory Flexibility Analysis

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

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

There are eight spearmint oil handlers subject to regulation under the order, and approximately 59 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 59 Scotch spearmint oil producers and 21 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2006–2007 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil production from 1980 through 2003 was about 0.24. The CV for spearmint oil grower prices was about 0.13, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 49 percent of the 25-year average (1.846 million pounds from 1980 through 2004) and the largest crop was approximately 167 percent of the 25-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As noted earlier, almost all spearmint oil producers diversify by growing other crops.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available.

However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of this needs to take place by November 1.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2006–2007 marketing year for both classes of oil at 1,912,500 pounds, and that the expected combined carry-in will be 67,651 pounds. This results in a combined salable quantity needed of 1,844,849 pounds. Therefore, with volume control, sales by producers for the 2006–2007 marketing year would be limited to 2,959,453 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2006–2007 producer allotments are based, are 45 percent for Scotch and 46 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.49 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The Far West producer price for both classes of spearmint oil was $9.40 for 2004, which is below the average of $10.85 for the period of 1980 through 2004, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2006–2007 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

The Committee considered various alternative levels of volume control for Scotch spearmint oil, including increasing the percentage to a less restrictive level, or decreasing the percentage. After considerable discussion the Committee unanimously determined that 878,205 pounds and 45 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2006–2007 marketing year.

The Committee also considered various alternative levels of volume control for Native spearmint oil. After considerable discussion the Committee unanimously determined that 1,007,886 pounds and 46 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2006–2007 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2006–2007 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from $4.00 per pound to $11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price (1980–2004) of $12.80 per pound for Scotch spearmint oil and $9.83 per pound for Native spearmint oil.

During the period of 1998 through 2004, however, large production and carry-in inventories have contributed to prices below the 25-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from $8.00 to $11.00 per pound for Scotch spearmint oil and between $9.10 and $10.00 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either

small or large spearmint oil producers and handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 5, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 30-day comment period is provided to allow interested persons the opportunity to respond to this proposal. This comment period is deemed appropriate so that a final determination can be made prior to June 1, 2006, the beginning of the 2006–2007 marketing year. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.225 is added to read as follows:

[**Note:** This section will not appear in the Code of Federal Regulations.]

§ 985.225 Salable quantities and allotment percentages—2006–2007 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2006, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 878,205 pounds and an allotment percentage of 45 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,007,886 pounds and an allotment percentage of 46 percent.

Dated: January 27, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–948 Filed 1–30–06; 9:06 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA–2006–23730; Notice No. 06–01]

RIN 2120–AI68

Passenger Facility Charge Program, Debt Service, Air Carrier Bankruptcy, and Miscellaneous Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to change the passenger facility charge program to add more eligible uses for revenue, protect such revenue in bankruptcy proceedings, and eliminate charges to passengers on military charters. These proposed actions respond to the Vision 100—Century of Aviation Reauthorization Act. In addition, the proposed action would revise current reporting requirements to reflect technological improvements; incorporate some existing practices and policies into current regulations; and clarify and update existing references and regulations. This proposal would further streamline the existing policies of the passenger facility charge program.

DATES: Send your comments on or before April 3, 2006.

ADDRESSES: You may send comments [identified by Docket Number FAA–2006–23730] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sheryl Scarborough, Airports Financial Analysis & Passenger Facility Charge Branch, APP–510, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8825; facsimile: (202) 267–5302; e-mail: *sheryl.scarborough@faa.gov*; or Beth Weir, Airports Law Branch, AGC–610, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5880; facsimile: (202) 267–5769.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to join in this rulemaking by filing written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment for an association, business, labor union). You may review 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.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40117. Under that section, the FAA, by delegation, is charged with prescribing regulations to impose a passenger facility fee to finance an eligible airport-related project. This regulation is within the scope of that authority because Vision 100 requires the FAA to change the PFC program. Many proposals in this document are taken from Vision 100.

Background

On March 23, 2005, the FAA published a final rule (2005 final rule) to create a 3-year pilot program for non-hub airports to test new application and application approval procedures for the passenger facility charge (PFC) program (70 FR 14928). The final rule contains several changes designed to streamline the PFC application and amendment procedures for all PFC applications and amendments to improve the entire PFC program.

The FAA published the 2005 final rule to address Congressional mandates in the Vision 100—Century of Aviation Reauthorization Act (Vision 100). The non-hub pilot program, with the PFC application streamlining procedures, however, was only one of six mandates specified in Vision 100. The FAA separated the non-hub program and related changes from the other mandates because Congress had required the FAA to publish proposed rules on the pilot program within 180 days of enactment of Vision 100.

This rulemaking addresses the remaining mandates in Vision 100. These mandates include:

(1) Making low-emission airport vehicles and ground support equipment eligible for PFC funding,

(2) Using PFCs to pay debt service on projects that are ''not an eligible airport-related project'' when there is a financial need at an airport,

(3) Clarifying the PFC status of military charters,

(4) Structuring PFC account requirements for carriers in bankruptcy, and

(5) Making eligible the use of PFC revenue as local share for projects under the air traffic modernization cost-sharing program.

In addition, the FAA is proposing other changes, two of which would streamline benefits beyond those contained in the 2005 final rule. These proposed changes would:

(1) Provide for the electronic filing of notices and reports;

(2) Provide a process for periodic review and change of the carrier compensation level; and

(3) Modify the content and due date for some public agency reports and notices.

Discussion of the Proposals

The NPRM is divided into three parts:

(1) Changes mandated by Vision 100;

(2) Changes associated with technological improvements; and

(3) Changes to streamline PFC procedures, codify PFC policies, or address issues or questions about the PFC program.

Changes Mandated by Vision 100

Low-Emission Airport Vehicles and Ground Support Equipment

Section 121 of Vision 100 establishes a voluntary program to reduce airport ground emissions at commercial service airports in air quality nonattainment and maintenance areas (49 U.S.C. 40117(a)(3) and (b)(5)). This program makes the cost of new or converted equipment or vehicles eligible for PFC funding. The intent of the program is not to cause the premature retirement of existing equipment or vehicles, but to provide incentives to buy replacements

or to convert existing equipment to meet lower emissions standards. The program helps airports meet their obligations under the Clean Air Act (42 U.S.C. 7501(2)) and helps regional efforts to meet health-based National Ambient Air Quality Standards. The program goal is to reduce the amount of regulated pollutants and other harmful air emissions produced by ground transportation sources at airports. The program also supports efforts to increase U.S. energy independence by emphasizing domestically produced alternative fuels that are substantially nonpetroleum based. The program provides public agencies with financial and regulatory incentives to increase their investment in proven low-emission technology. Use of alternative fuel vehicles and other low-emission technologies that are particularly suited to the airport environment are highly encouraged.

To address Vision 100, the proposed rule would add the definition of ''ground support equipment'' to § 158.3. Ground support equipment includes vehicles used for operations and maintenance of aeronautical activities, but does not include vehicles used to meet safety, security, and snow removal requirements. Baggage tugs, belt loaders, cargo loaders, forklifts, fuel trucks, lavatory trucks, and pushback tractors are among the types of vehicles that fit the definition of ground support equipment. In addition, battery recharging and alternate fueling stations are eligible under this program.

The low-emission vehicle program provides a funding mechanism to acquire low-emission technology, which often is more costly than conventional technology. The proposed rule would modify § 158.13 by setting the maximum allowable cost for certain low-emission technology projects. For new vehicle purchases, public agencies may only use PFC revenue for the added cost of the low emission technology above the cost of a conventional emission vehicle. For vehicles being converted to low-emission technology, public agencies may only use PFC revenue for the reasonable cost of the conversion.

The proposal would add paragraph (b)(8) to § 158.15 to provide the eligibility requirements for low-emission vehicle projects. To be eligible, the airport must be located in an FAA and Environmental Protection Agency designated air quality nonattainment or maintenance area. In addition, the airport must receive emission credits for completing the project from the appropriate State air quality agency.

Eligible projects must either (1) convert existing vehicles powered by diesel or gasoline engines to low-emission technology or the use of cleaner burning fuels, or (2) buy new vehicles that include low-emission technology or use cleaner burning fuels.

Interested parties are directed to the following Web site to obtain guidance on determining the eligibility of projects and how benefits to air quality must be demonstrated: *http://www.faa.gov/arp/environmental/VALE/Index.cfm.*

Use of Fees To Pay Debt Service

Section 122 of Vision 100 amended the statute to permit an exception to use PFC revenue to pay the debt service costs of airport-related projects that otherwise are not PFC-eligible if the public agency can show a financial need (49 U.S.C. 40117(b)(6)). The FAA expects that a public agency seeking relief under this provision wants to restore its financial stability and health. A proposed new definition, ''Financial need,'' would be added to § 158.3. This definition would tie the financial need of a public agency to its ability to meet operational and debt obligations and maintain at least a 2-month reserve fund. Such financial need typically results from a series of events that cumulatively weaken the financial condition of the public agency. The FAA defines ''financial need'' based on information collected from several airports regarding their capital reserve funds and broadly accepted principles of airport financial fitness.

Proposed paragraph (e) to § 158.13 would provide an exception permitting the use of PFC revenue to pay debt service costs for a noneligible project.

Proposed new § 158.18 would provide for the use of PFC revenue to pay debt service cost for noneligible projects. Financial need is based on severe financial constraints suffered by the airport or public agency. This adverse financial position usually results from one or more events beyond the reasonable control of the public agency, resulting in a financial crisis for the airport. These events may include:

(1) The bankruptcy of an air carrier serving the airport that results in rejecting leases for a significant portion of all air carrier gates at that airport;

(2) Significantly reduced service by one or more air carriers that accounts for a major portion of the enplaned passenger traffic at the airport; or

(3) Other dramatic changes in air carrier service patterns that undermine the ability of the public agency to pay for airport development already constructed.

Other events, such as natural disasters, may also create a financial need for the public agency.

A public agency should show that its financial recovery plan makes use of all available resources. The FAA would authorize an airport or public agency to impose a PFC under this paragraph only for the period necessary to cure the airport's or agency's financial need. Furthermore, the FAA expects the public agency to use any revenue saved by this PFC to return the airport to a state of financial fitness in as quick a period as possible. For example, use of the saved revenue to incur additional non-aeronautical debt or development costs would not return the airport to a state of financial fitness.

A public agency applying for PFC revenue under this provision must use the application procedures in § 158.25 and document its financial position by providing information regarding:

(1) A change in passenger enplanements for a carrier;

(2) Negative actions taken on the public agency's bond rating;

(3) The inability of the public agency to meet bond payments and associated requirements;

(4) Alternative sources of revenue available to the public agency, such as grant funds, state funds, concession revenue, vehicle parking fees, aircraft parking fees, other non-aviation fees, fuel taxes, and revenue from any other operators using the airport. (The submitted information must address whether these fees can be raised to create more revenue for the airport);

(5) The impact of any necessary increases to the rate base or landing fees for concession and carrier revenue because of the loss of revenue from a change in economic circumstances (e.g., the bankruptcy or financial troubles of a carrier);

(6) Actions taken by the public agency to reduce cost, such as operational changes, personnel actions, or capital project postponement;

(7) The source(s) of revenue currently used to pay bond cost;

(8) The current airport fee structure and methodology used to calculate rates and charges;

(9) The affect of the loss of an air carrier or adding a new carrier on the current fee structure;

(10) The planned use of revenue saved by using PFCs to pay the debt service and how this use will aid the return to financial fitness; and

(11) Any other information the public agency believes will document the financial need of the airport.

The FAA will use the procedures in § 158.27 to analyze the information

submitted by the public agency, and then issue its decision on a case-by-case basis under § 158.29.

Clarification of Applicability of PFCs to Military Charters

Section 123(c) of Vision 100 amended the PFC statute to prohibit collecting PFCs from passengers on military charter flights (49 U.S.C. 400117(e)(2)). Proposed paragraph (a) (6) to § 158.9 would clarify that passengers who do not pay directly for the air transportation due to Department of Defense charter arrangements or payments will not pay PFCs.

Financial Management of Passenger Facility Fees

Section 124 of Vision 100 added specific requirements to protect PFC revenue from creditors when air carriers file for bankruptcy protection after the date of enactment of Vision 100 (49 U.S.C. 40117 (m) (1–7)). Through this provision, Congress has specifically recognized and protected the trust fund status of PFC revenue and prohibited air carriers from using PFCs as security with third parties.

Air carriers historically have commingled PFC revenue in accounts with other revenue until it was time to remit the PFC revenue to the various public agencies. Before Vision 100, in situations where an air carrier filed for bankruptcy protection and owed PFC remittances, public agencies had difficulties recovering past due PFCs. In part, these difficulties arose because the PFC revenue was commingled and, thus, difficult for bankruptcy courts to identify and public agencies to recover. Section 124 prohibits the commingling of PFC revenue with other revenue for air carriers in bankruptcy. In addition, section 124 requires that air carriers in bankruptcy set up separate PFC accounts to handle PFC transactions—receipt of revenue from passengers and issuance of remittance to public agencies. This provision should enable bankruptcy courts to more easily identify PFC revenue for remittance to public agencies.

The proposed rule would add a definition of ''covered air carrier'' to § 158.3. The new definition states that a covered air carrier is an air carrier that has filed for bankruptcy protection or has had an involuntary proceeding started against it after December 12, 2003.

In addition, the proposed rule would modify paragraph (b) of § 158.49, which allows air carriers to commingle PFC revenue with an air carrier's other sources of revenue, so that this paragraph does not apply to covered air carriers.

A new paragraph (c) would be added to § 158.49 requiring a covered air carrier segregate the PFC revenue into a designated PFC account when it enters bankruptcy protection. A covered air carrier would be required to set up the PFC account dedicated solely to PFCs, with a deposit equal to the average month's balance, based on the air carrier's past 12 months of PFC collections net of any credits or handling fees allowed by law. A covered air carrier would be required to ensure the account balance never falls below this initial fixed deposit amount (''PFC Reserve''). Besides the method proposed in this rulemaking, the FAA considered requiring the covered air carrier to keep a rolling balance in the designated PFC account. This rolling balance was based on an average of the previous 12 month's collections recalculated monthly as a method to calculate an amount that would be a fair account balance. The monthly recalculation would have captured situations where an airport served by the air carrier started PFC collections or increased its level of PFC collections after the PFC account was established. However, the FAA eventually concluded that recalculation on a rolling basis would be too burdensome on the covered air carrier and difficult for the FAA and the public agencies to monitor.

The FAA recognizes that a covered air carrier may change its route structure during its bankruptcy and this change in route structure may, in turn, effect the average PFCs collected. Therefore, under the proposal a covered air carrier would be permitted to recalculate and reset the PFC Reserve and daily PFC amount on each successive anniversary date of its bankruptcy petition.

Proposed paragraph (c) to § 158.49 would allow a covered air carrier to deposit ticket sales revenue to its general operating account before separating the types of revenue. The proposal requires the covered air carrier to sweep its general operating account at least once a business day to take the PFC revenue initially deposited in this account and redeposit it in the PFC account. Through recent experience, the FAA has discovered that not all covered air carriers can judge the PFC collections on a daily basis. Accordingly, under the proposal, a covered air carrier that cannot accurately move the PFC revenue daily may elect to deposit into the PFC account daily, an estimated amount based on 1/30th of the PFC Reserve balance. A covered air carrier that sweeps with the estimated amount will be required to reconcile the PFC account for accuracy no later than the 20th of each month. This provision allows the covered air carrier to have an accurate PFC balance in place at the time of required PFC remittances.

The proposed paragraph reiterates Congress' mandate to protect the trust fund status of PFC revenue. Even if the covered air carrier fails to follow the procedures in this paragraph, this trust fund status shall not be defeated by an inability of any party to identify and trace precise amounts of PFC revenue in the air carrier's accounts. The proposed paragraph also prohibits a covered air carrier and its agents from granting a security or other interest in the PFC revenue to a third party.

Proposed paragraph (c) also provides that, if a public agency is forced to incur costs to recover PFC revenue because the covered air carrier failed to comply with these new PFC revenue-handling procedures, the covered air carrier is required to compensate the public agency for its costs. This provision applies to costs incurred by a public agency in pursuit of PFCs owed if a covered air carrier fails to make its PFC payments under the statute or rule (49 U.S.C. 40117(m)(4).

Proposed paragraph (b) to § 158.53 would state that a covered air carrier is entitled to keep the interest portion of the compensation only as long as the air carrier follows the procedures in § 158.49.

Proposed paragraph (b) to § 158.65 would require that, besides reporting to the public agencies, covered air carriers must send a copy of their quarterly report to the FAA. Covered air carriers also will be required to send a PFC account statement to the FAA on the fifth day of the month. The account statement will include the balance of their PFC account, the balance of their PFC reserve amount, total PFC funds deposited, and total PFC funds dispersed. This monthly report allows the FAA to monitor the covered air carrier's compliance with the requirements of § 158.49. The monthly report must continue while a covered air carrier remains in a bankruptcy proceeding.

Cost Sharing of Air Traffic Modernization Projects

Section 183 of Vision 100 set up a program to allow cost sharing of air traffic modernization projects (49 U.S.C. 44517(a)). This program is intended to improve aviation safety and the mobility of the Nation's air transportation system by encouraging non-Federal investment in critical air traffic control equipment and software. Under this program the

FAA may make grants to eligible sponsors to pay a portion of the cost of FAA-approved projects to procure and install air traffic facilities and equipment. The program is intended to allow sponsors to achieve accelerated deployment of eligible facilities and equipment and to help expand aviation infrastructure. The sponsor may fund the non-Federal portion of the project costs through various methods including the use of PFC revenue.

If a public agency wishes to use PFC revenue to pay for all or a portion of the non-Federal share of the project, the public agency must first obtain authority to impose a PFC and use PFC revenue under the procedures in §§ 158.25 or .30.

Currently, paragraph (d) of § 158.13 allows the use of PFC revenue to pay for the non-Federal share of costs for a project funded under the Federal airport grant program. This paragraph will be renumbered as paragraph (g) and expanded to include the FAA's ''program to permit cost-sharing of air traffic modernization projects.''

A new proposed paragraph (8) to § 158.15(b) would list a project approved under the FAA's program to allow cost sharing of air traffic modernization projects as PFC-eligible.

Changes Because of Technological Improvements

Major examples of technological improvements since the PFC program inception in 1990 are the use of electronic or paperless airline ticketing, the use of electronic mail to send documents, and web sites to post information.

The existing procedures for collection of PFCs from passengers were developed based on the assumption that ticket issuance would require a physical transaction, including the issuance of a paper airline ticket and a physical ticket issuance. Today, passengers can buy airline tickets using many methods, including the internet, and many air carriers no longer issue paper tickets. Furthermore, airline code-sharing and global alliances that have expanded ticketing options were not widely in place in 1990.

Currently, carriers have several options for PFC collection if the ticket is issued outside the U.S., including non-collection of any PFCs if the carrier does not serve a point in the U.S. Furthermore, airline code-sharing and global alliances, which were not common in 1990, have grown and created the potential for mistakenly administered and mishandled PFCs. A person living in the United States may buy airline tickets for domestic travel over the internet from a foreign carrier. Such transactions may confuse foreign carriers, especially those who do not have significant operations in the U.S., when determining the proper procedures to follow. To address these issues, the FAA is proposing several changes to part 158.

The proposal would define the ''point of issuance of airline tickets'' in § 158.3 to include electronic and other ticketing mediums. The definition of ''air travel ticket'' would be expanded to bring the definition in line with the varying methods of ticketing, including electronic records, boarding passes, and any other ticketing medium. In reference to a passenger's itinerary, the word ''complete'' would be removed since today's passengers may obtain documents, including a receipt showing the PFCs paid on each leg of their itinerary.

Proposed paragraph (a) of § 158.47 would clarify that U.S. and foreign air carriers must follow the requirements of § 158.45 when the itinerary is for travel within the U.S. regardless of the location of the ticket issuance.

The second technological improvement addressed by this proposal is the submission of information. Current air carrier quarterly reporting requirements in part 158 provide public agencies with information about PFC revenue remitted to the public agency, refunded to passengers, and retained by the air carrier. Air carrier quarterly reports allow public agencies to monitor their collections and identify any discrepancies in a timely manner.

The FAA has developed a national PFC database that stores information on PFC application and project approvals. Before issuing a final rule, the FAA expects to develop modules to collect the same types of information directly from the public agencies and air carriers for quarterly reports.

A comment submitted to the NPRM that was the basis of the 2005 final rule suggested the FAA eliminate the monthly and quarterly reports filed by air carriers to public agencies and, instead, create an air carrier annual report with currently required information. Since this comment was outside the scope of that notice, the FAA stated that it would consider the comment for inclusion in a future rulemaking.

Part 158 includes an air carrier reporting requirement to provide public agencies with information about the amount of PFC revenue remitted to the public agency, refunded to passengers, and retained by the carrier. The FAA determined that a quarterly report allows public agencies to monitor their collections and identify any discrepancies in a timely manner.

Paragraph (a) of proposed § 158.20 would permit public agencies and air carriers to send required documents such as letters, reports, and certifications of agreement/disagreement by e-mail, facsimile, courier, or regular mail. Paragraph (b) provides that public agencies and air carriers may use the PFC national database to post their quarterly reports. Thus, the FAA will not require public agencies and air carriers using this database to use U.S. Postal Services to send their quarterly reports to interested parties.

To accommodate the interests of as many public agencies as possible, the FAA will maintain the requirement in § 158.65 that the air carriers provide quarterly reports or input into the national PFC database. A public agency will be able to view these reports any time.

Changes To Streamline PFC Procedures, Codify PFC Policies, or Address Issues or Questions About the PFC Program

As the PFC program has developed, the FAA has recognized the need to streamline its existing policies. The discussions below identify certain areas where we are proposing changes to the current rule. Section 158.3 would redefine or add several definitions for terms currently in use. The first two definition changes result from new terms introduced with the nonhub program. The third new definition claries existing FAA policy.

- ''Approved project'' would be revised to ensure that projects acknowledged under the non-hub program are included in the definition. Under the non-hub program, the FAA ''acknowledges'' the notice of intent and the projects contained therein. However, there are many sections of part 158 that are applicable to projects being financed with PFC revenue and, thus, are applicable to both approved and acknowledged projects.
- ''Notice of intent (to impose a PFC or use PFC revenue)'' is a term used in the non-hub PFC authorization procedures. Public agencies receiving PFC authorization under the non-hub procedures must comply with all rules of the PFC program outside the authorization procedures in § 158.25. PFC authorizations for these other applications are identified as PFC applications and part 158 makes many references to ''PFC application'' or just ''application.'' Rather than adding the term ''notice of intent'' at every location where the term ''application'' is used,

the FAA is proposing to add a definition of ''notice of intent.'' The proposed definition would include a statement to clarify that, except for those sections of part 158 that deal with specific authorization procedures, the terms ''notice of intent'' and ''application'' should be used interchangeably.

• The FAA has been approving collection of PFC revenue to pay for a public agency's cost of administering its PFC program based on the existing definition of the allowable costs in part 158. However, part 158 does not include a definition of the types of costs covered under PFC administrative support costs. Adding a definition for ''PFC administrative support costs'' would clarify the types of costs that public agencies should identify as PFC administrative support costs.

About 10 years ago, the FAA adopted a policy of advising public agencies to apply for PFC administrative support costs as a separate project. This policy has allowed the FAA to monitor more closely the public agency's costs and review the scope of work. However, not all public agencies have complied with this policy. Some public agencies include their administrative support costs within their development projects, resulting in inaccurate cost estimates for both the development projects and the administrative costs. The proposed rule would add paragraph (b) to § 158.13 providing that public agencies may use PFC revenue to pay for allowable PFC administrative support costs. The new paragraph would direct that public agencies treat PFC administrative support costs as a separate and distinct PFC project in a PFC application or notice of intent.

The PFC program is available to States, territories, Commonwealths, and possessions of the United States. Initially, the Trust Territory of the Pacific Islands was a territory of the U.S. and, thus, was eligible to participate in the PFC program. The Compact of Free Association between the U.S., Marshall Islands, and Federated States of Micronesia provided that newly independent States would be eligible to participate in Federal programs, such as the PFC program, for 15 years after adopting the Compact. The 15-year period ended in 2001, and the Marshall Islands and Federated States of Micronesia are no longer eligible to participate in the PFC program. Therefore, the definition for ''State'' would be redefined to remove the Trust Territory of the Pacific Islands.

This proposal changes the current title of § 158.30 to ''PFC Authorization at Non-Hub Airports.'' This proposed change clarifies that PFC authorizations at non-hub airports relate to size of airport and not to aircraft pilots at non-hub airports. The sunset provision in paragraph (h) remains in effect (49 U.S.C. 40117(l)(7)).

The proposed editorial changes in § 158.31 clarify the intent of the original language.

Proposed paragraphs (a)(2), (c)(1), and (c)(2) of § 158.33 would clarify the term ''charge effective date.'' A public agency may only collect on one PFC decision at a time meaning the charge effective date for a subsequent application must be on or after the charge expiration date for the current application.

The FAA wrote § 158.33 to require public agencies to take certain actions within a prescribed period of time after the charge effective date of an application. However, a literal reading of the current regulation could lead to the belief that, for example, a project approved for collection in 2005 in an application with a charge effective date of 2016 need not be implemented for 11 years. The FAA interprets the timelines in § 158.33 with regard to the start of collections for an application as being either the charge effective date or the date the application was approved.

Section 158.37 requires a public agency to consult with air carriers and provide notice and the opportunity for public comment if the public agency is seeking to increase the PFC amount of a project by more than 25 percent of the originally approved amount. While the FAA believes the 25 percent threshold is reasonable, an excess of amendments could overburden the consultation and comment processes, requiring consultation for insignificant amounts. For example, the FAA has approved several projects for amounts of $1,000 or less. Under the current rules, an increase of $250 to a $1,000 project would trigger the need for consultation and public comment.

The FAA examined the existing universe of PFC projects and concluded that over 75 percent of these projects have a PFC cost below $1 million. Generally, these projects have well-established costs. Increases are often sought because of changes in quantities or differences in estimated or actual costs. Furthermore, the FAA rarely receives substantive comments from air carriers or the public on projects with PFC costs below $1 million. This proposed rule would modify § 158.37 to provide a minimum dollar threshold. For projects with originally approved amounts at or above this threshold, an increase of more than 25 percent would trigger the need for consultation and public comment. For projects with originally approved amounts below this threshold, public agencies will not need to consult with air carriers and provide the opportunity for public comment, regardless of the percentage increase in costs proposed. Paragraphs (b)(1)(i)(A), (b)(1)(ii)(C), (b)(1)(ii)(D), and (b)(5) would be modified to address this proposed threshold.

This proposed rule would clarify the language in paragraph (a) of § 158.39 by adding ''earned thereon'' after '' * * * plus interest.'' A public agency must include the PFC principal and the interest earned thereon in determining whether it has collected the total amount of PFC revenue authorized.

Proposed paragraph (d) of § 158.39 would delete ''under § 158.25(c)'' from the second sentence. As discussed earlier in the notice of intent definition, ''notice of intent'' may be used interchangeably with ''PFC application.''

Currently, paragraph (b)(3) of § 158.43 requires a public agency to set its charge effective date as the first day of a month at least 60 days from the date the notice was sent to air carriers. Since its beginning, however, air carriers have developed procedures for programming new PFC collections at airports and are able to perform this programming in 30 days. This proposal would change the requirement to 30 days in paragraph (b)(3) of § 158.43.

Current FAA policy requires at least 30 days notice to allow air carriers enough time to reprogram their systems. However, public agencies continue to make changes with less than 30 days notice. Occasionally, this results in the FAA not processing the change and the public agency's collection is either prematurely stopped or extended a month beyond the intended expiration date. The proposed rule would modify paragraph (c) of § 158.43 to require that public agencies notify air carriers and the FAA at least 30 days before changing the charge expiration date.

The proposed rule would modify paragraphs (a)(3) of § 158.45 and (c)(4) of § 158.47 to clarify that failure to travel on a nonrefundable or expired airline ticket is not a change in itinerary. Ticket purchasers holding nonrefundable or expired tickets are not entitled to a refund of any associated PFCs if the ticket purchaser is not entitled to any fare refund.

The PFC statute requires the FAA set up a uniform collection compensation amount reflecting the ''average reasonable and necessary expenses'' of the air carriers' collection and handling of the PFC (49 U.S.C. 40117 (i)(2)(C)). A periodic review of the collection compensation rate is fair and reasonable because of changing air carrier PFC

handling costs. The costs may include handling, reporting, escrow, collecting, and remittance fees. The proposed rule would provide for periodic review outside the formal rulemaking process.

In the future, the FAA plans periodically to publish a notice in the **Federal Register** asking that air carriers voluntarily provide data on their costs associated with the PFC program. Proposed paragraph (c) of § 158.53 would include a list of the 11 categories of cost data the FAA tentatively has determined represent the incremental costs directly associated with PFC collection, handling, remittance, reporting, recording keeping, and auditing by air carriers. If the FAA determines a new level is warranted, we would publish a second **Federal Register** notice seeking public comment. We would publish a third notice in the **Federal Register** providing a final determination.

The FAA has developed its national PFC database and identified the need for national consistency in the information reported. This database allows public agencies to input the revenue received on either a monthly or quarterly basis. The FAA chose the actual revenue received method rather than accrual basis method because actual basis is more closely tied to when PFC collections are completed. This proposal would modify paragraph (a) of § 158.63 to clarify that public agencies must report revenue actually received from the air carriers rather than on an accrual basis.

Currently, large and medium hub airports are required to file their annual PFC revenue forecasts by August 1. The FAA set the August 1 date based on when it usually received its first estimates on airport enplanements and, thus, could make the first estimates on AIP apportionments for the upcoming fiscal year. The FAA streamlined its process for gathering enplanement data and now makes its AIP apportionment estimates about July 1. The proposal would modify paragraph (c) of § 158.63 to specify July 1 as the date that large and medium hub airports report their forecast PFC revenue for the upcoming Federal fiscal year.

This proposal would delete § 158.97, Special rule for transitioning airports, which expired at the end of Federal fiscal year 2004.

Experience has shown that most PFC projects are physically completed long before they are financially completed. This contrasts with AIP grant projects where the financial completion of the project follows quickly after the project's physical completion. This proposal would modify assurance 10 of part B of Appendix A to part 158 to add ''physical and financial'' before ''completion'' in the first sentence to clarify the time public agencies need to retain their records.

The proposal would also update several authorization citations.

Location	Reference	
	From	To
§ 158.67(c)(2)	Single Agency Audit Act of 1984 (31 U.S.C. 7501–7).	Office of Management and Budget Circular A–133 (The Single Audit Act of 1984, P.L. 98–502, and the Single Audit Act Amendments of 1996, P.L. 104–156).
§ 158.81	Airport Noise and Capacity Act of 1990	49 U.S.C. 47523 through 47528.
Assurance 12 of part B of Appendix A	Airport Noise and Capacity Act of 1990	49 U.S.C. 47523 through 47528.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment Economic Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only on a reasoned determination the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this proposed rule (1) has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in the DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not have an effect on international trade; and (4) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the preliminary regulatory evaluation supporting today's rule, are summarized below.

Costs of This Rulemaking

Vision 100 mandates some changes to the PFC process that are not subject to the FAA's discretion. Changes other than those prescribed by Vision 100 are discretionary and the costs and cost savings are estimated in the table below.

Sector	Costs	Cost savings	Net cost savings	Present value
Airports	$17,100	$1,638,600	$1,621,500	$1,138,300
Airlines	63,000	1,481,100	1,418,100	993,000
FAA	971,500	235,900	(735,600)	(737,700)
Total	1,051,600	3,355,600	2,304,000	1,393,600

Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rulemaking action will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a rulemaking action is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposal would not have a significant impact on a substantial number of entities. An airport operator (North American Industry Classification System (NAICS) 488119) is classified as a small entity if it has annual revenues of $6 million or less. The average revenue for these airports was $1.7 million, and the median revenue was $1.1 million for 2003. The entire cost to all airports is estimated to be $17,100. Thus, no small airport would experience a significant economic impact. A scheduled or nonscheduled passenger air carrier (NAICS 481111) is considered a small entity if it has 1,500 or fewer employees. The FAA has identified 57 air carriers with authorization to carry passengers that meet this classification. Small carriers that collect PFCs would not be adversely affected since any adjustments to modify ticketing or other administrative costs that small air carriers may incur as a result of this proposed rule are recoverable under the existing compensation provisions.

Therefore, the FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, they be the basis for U.S. standards. Foreign carriers would be required to collect PFCs on wholly domestic U.S. travel that U.S. carriers are already required to collect, and the foreign carriers would be entitled to the same compensation provisions as U.S. carriers. The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and, thus, have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Paperwork Reduction Act

This proposal contains the following new information collection requirements: Covered Air Carrier Monthly Escrow Account Report. In addition, the proposal contains changes in some existing public agency and air carrier reporting requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Passenger Facility Charge Program, Debt Service, Air Carrier Bankruptcy, and Miscellaneous Changes

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that match these proposed regulations.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

Environmental Analysis FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 3f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 158

Air carriers, Airports, Passenger facility charge, Public agencies, Collection compensation.

The Proposed Amendment

Because of the above, the Federal Aviation Administration proposes to amend part 158 of Title 14, Code of Federal Regulations, as follows:

PART 158—PASSENGER FACILITY CHARGES (PFCs)

Subpart A—General

1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40116–40117, 47106, 47111, 47114–47116, 47524, 47526.

2. Amend § 158.3 as follows:

a. Revise the definitions for *Air travel ticket*, *Approved Project*, and *State* to read as set forth below.

b. Add definitions for *Covered air carrier, Financial need, Ground support equipment, Notice of intent (to impose a PFC or use PFC revenue), PFC administrative support costs,* and *Point of issuance for electronic tickets or other ticketing medium* in alphabetical order to read as set forth below.

§ 158.3 Definitions.

* * * * *

Air travel ticket includes all documents, electronic records, boarding passes, and any other ticketing medium about a passenger's itinerary necessary to transport a passenger by air, including passenger manifests.

* * * * *

Approved project means a project for which the FAA has approved using PFC revenue under this part. The FAA may also approve specific projects contained in a single or multi-phased project or development described in an airport capital plan separately. This includes projects acknowledged by the FAA under § 158.30 of this part.

* * * * *

Covered air carrier means an air carrier that files for bankruptcy protection, or has an involuntary bankruptcy proceeding started against it after December 12, 2003.

* * * * *

Financial need means that a public agency cannot meet its operational or debt service obligations and does not have at least a 2-month reserve fund.

* * * * *

Ground support equipment means service and maintenance equipment used at an airport to support aeronautical operations and related activities. Baggage tugs, belt loaders, cargo loaders, forklifts, fuel trucks, lavatory trucks, and pushback tractors are among the types of vehicles that fit this definition.

* * * * *

Notice of intent (to impose a PFC or use PFC revenue) means a notice under § 158.30 from a public agency controlling a non-hub airport that it intends to impose a PFC and or use PFC revenue. Except for §§ 158.25 through 30, ''notice of intent'' can be used interchangeably with ''application.''

* * * * *

PFC administrative support costs means the reasonable and necessary costs of developing a PFC application or amendment, issuing and maintaining the required PFC records, and performing the required audit of the public agency's PFC account. These costs may include reasonable monthly financial account charges and transaction fees.

Point of issuance of airline tickets means the billing address of the buyer's credit card or the physical location of a cash or check transaction.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

* * * * *

3. Amend § 158.9 by revising paragraphs (a)(4) and (5) and by adding paragraph (a)(6) to read as follows:

§ 158.9 Limitations.

(a) * * *

(4) On flights, including flight segments, between 2 or more points in Hawaii;

(5) In Alaska aboard an aircraft having a certificated seating capacity of fewer than 60 passengers; or

(6) Enplaning at an airport if the passenger did not pay for the air transportation that resulted in the enplanement because of Department of Defense charter arrangements and payments.

* * * * *

4. Amend § 158.13 by revising paragraphs (b), (c), (d), and (e) and adding paragraphs (f), (g), and (h) to read as follows:

§ 158.13 Use of PFC revenue.

* * * * *

(b) *PFC administrative support costs.* Public agencies may use PFC revenue to pay for allowable administrative support costs. Public agencies must submit these costs as a separate project in each PFC application.

(c) *Maximum cost for certain low-emission technology projects.* If a project involves a vehicle or ground support equipment using low emission technology eligible under 158.15(b), the FAA will determine the maximum cost that may be financed by PFC revenue. The maximum cost for a new vehicle is the incremental amount between the purchase price of a new low emission vehicle and the purchase price of a standard emission vehicle, or the cost of converting a standard emission vehicle to a low emission vehicle.

(d) *Bond-associated debt service and financing costs.*

(1) Public agencies may use PFC revenue to pay debt service and financing costs incurred for a bond issued to carry out approved projects.

(2) If the public agency's bond documents require that PFC revenue be commingled in the general revenue stream of the airport and pledged for the benefit of holders of obligations, the FAA considers PFC revenue to have paid the costs covered in § 158.13(b)(1) if—

(i) An amount equal to the part of the proceeds of the bond issued to carry out approved projects is used to pay allowable costs of such projects; and

(ii) To the extent the PFC revenue collected in any year exceeds the debt service and financing costs on such bonds during that year, an amount equal to the excess is applied as required by § 158.39.

(e) *Exception providing for the use of PFC revenue to pay for debt service for non-eligible projects.* The FAA may authorize a public agency under § 158.18 to impose a PFC for payments for debt service or indebtedness incurred to carry out an airport project that is not eligible if the FAA determines that such use is necessary because of the financial need of the public agency.

(f) *Combination of PFC revenue and Federal grant funds.* A public agency may combine PFC revenue and airport grant funds to carry out an approved

project. These projects are subject to the record keeping and auditing requirements of this part, as well as the reporting, record keeping and auditing requirements imposed by the Airport and Airway Improvement Act of 1982 (AAIA).

(g) *Non-Federal share.* Public agencies may use PFC revenue to meet the non-Federal share of the cost of projects funded under the Federal Airport Improvement Program or the FAA ''Program to Permit Cost-Sharing of Air Traffic Modernization Projects'' under 49 U.S.C. 44517.

(h) *Approval of project following approval to impose a PFC.* The public agency may not use PFC revenue or interest earned thereon except on an approved project.

5. Amend § 158.15(b) by revising paragraphs (5) and (6) and adding paragraphs (7) and (8) to read as follows:

§ 158.15 Project eligibility at PFC levels of $1, $2, or $3.

* * * * *

(b) * * *

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. 47504, without regard to whether the measures are approved under 49 U.S.C. 47504;

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental and automobile parking facilities, or other concessions. Projects required to enable added air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport have added eligibility. Such projects may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities next to the gate; or

(7) A project approved under the FAA's ''Program to Permit Cost-Sharing of Air Traffic Modernization Projects.'' under 49 U.S.C. 44517; or

(8) If the airport is in an air quality nonattainment area (as defined by section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a), and the project will result in the airport receiving appropriate emission credits as described in 14 CFR 47139, a project for:

(i) Converting vehicles and ground support equipment powered by a diesel or gasoline engine used at a commercial service airport to low-emission technology certified or verified by the Environmental Protection Agency to reduce emissions or to use cleaner burning conventional fuels; or

(ii) Acquiring for use at a commercial service airport vehicles and ground support equipment that include low-emission technology or use cleaner burning fuels.

* * * * *

6. Add § 158.18 to read as follows:

§ 158.18 Use of PFC revenue to pay for debt service for non-eligible projects.

(a) The FAA may authorize a public agency to impose a PFC on payments for debt service or indebtedness incurred to carry out an airport project that is not eligible if the FAA determines it is necessary because of the financial need of the public agency. The FAA defines financial need in § 158.3.

(b) A public agency may request authority to impose a PFC and use PFC revenue under this section using the PFC application procedures in § 158.25. The public agency must document its financial position and explain its financial recovery plan that uses all available resources.

(c) The FAA reviews the application using the procedures in § 158.27. The FAA will issue its decision on the public agency's request under § 158.29.

7. Add § 158.20 to read as follows:

§ 158.20 Submission of required documents.

(a) Letters and reports required by this part may be transmitted to the appropriate recipient (the public agency, air carrier, and/or the FAA) via e-mail, courier, facsimile, or U.S. Postal Service.

(1) Documents sent electronically to the FAA must be prepared in a format readable to the FAA. Interested parties can obtain the format at the local FAA Airports Office.

(2) Any transmission to FAA Headquarters, using regular U.S. Postal Service, is subject to inspection that may result in delay and damage due to the security process.

(b) Public agencies and air carriers may use the FAA's national PFC database to post their required quarterly reports, and, in that case, do not have to distribute the reports in any other way.

Subpart B—Application and Approval

8. Revise § 158.29(a)(1)(ii) and (b)(1)(ii) to read as follows:

§ 159.29 The Administrator's Decision.

(a) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15 except for those projects approved under § 158.18.

* * * * *

(b) * * *

(1) * * *

(ii) The project will achieve the objectives and criteria set forth in § 158.15 except for those projects approved under § 158.18.

* * * * *

9. Amend § 158.30 by revising the section heading to read as follows:

§ 158.30 PFC Authorization at Non-Hub Airports.

* * * * *

10. Amend § 158.31 by revising the introductory text and paragraph (b) to read as follows:

§ 158.31 Duration of authority to impose a PFC after project implementation.

A public agency that has begun implementing an approved project may impose a PFC until—

* * * * *

(b) The total PFC revenue collected plus interest earned thereon equals the allowable cost of the approved project;

* * * * *

11. Amend § 158.33 by revising paragraphs (a)(2), (c)(1) introductory text, and (c)(2) to read as follows:

§ 158.33 Duration of authority to impose a PFC before project implementation.

(a) * * *

(2) 5 years after the charge effective date, or the date of the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) if an approved project is not implemented.

* * * * *

(c) * * *

(1) 3 years after the charge effective date, or the date of the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) unless—

* * * * *

(2) 5 years after the charge effective date, or the date of the FAA's decision on the application (if the charge effective date is more than 60 days after the decision date) unless the public agency has obtained project approval.

* * * * *

12. Amend § 158.37 by revising the section heading, paragraphs (b)(1)(i)(A), (b)(1)(ii)(C), and (b)(5) and redesignating (b)(1)(ii)(D) and (b)(1)(ii)(E) as (b)(1)(ii)(E) and (b)(1)(ii)(F), respectively, and adding a new (b)(1)(ii)(D) to read as follows:

§ 158.37 Amendment of approved PFC.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) Amend the approved PFC amount for a project by more than 25 percent of the original approved amount if the amount was $1,000,000 or greater.

* * * * *

(ii) * * *

(C) To institute an increase of 25 percent or less of the original approved amount if the amount was more than $1,000,000;

(D) To institute an increase of any amount if the original approved amount of the project was less than $1,000,000.

* * * * *

(5) Justification, if the amendment involves a change in the PFC amount for a project by more than 25 percent of the original approved amount if that amount is $1,000,000 or greater, a change of the approved project scope, or any increase in the approved PFC level to be collected from each passenger;

* * * * *

13. Amend § 158.39 by revising paragraphs (a) and (d) to read as follows:

§ 158.39 Use of excess PFC revenue.

(a) If the PFC revenue remitted to the public agency, plus interest earned thereon, exceeds allowable costs of the project, public agencies must use excess funds for approved projects or to retire outstanding PFC-financed bonds.

* * * * *

(d) Within 30 days after the authority to impose a PFC has expired or been terminated, the public agency must present a plan to the appropriate FAA Airports office to begin using accumulated PFC revenue. The plan must include a timetable for submitting any necessary application under this part. If the public agency fails to submit such a plan, or if the plan is not acceptable to the Administrator, the Administrator may reduce Federal airport grant program apportioned funds.

Subpart C—Collection, Handling and Remittance of PFCs

14. Amend § 158.43 to revise paragraphs (b)(3) and (c) to read as follows:

§ 158.43 Public agency notification to collect PFCs.

* * * * *

(b) * * *

(3) The charge effective date will always be the first day of the month; however, it must be at least 30 days after the date the public agency notified the air carriers of the FAA's approval to impose the PFC.

* * * * *

(c) The public agency must notify air carriers required to collect PFCs at its airport and the FAA of changes in the charge expiration date at least 30 days before the existing charge expiration date or new charge expiration date, whichever comes first. Each notified air carrier must notify its agents, including other issuing carriers, of such changes.

* * * * *

15. Amend § 158.45 by revising paragraph (a)(3) to read as follows:

§ 158.45 Collection of PFCs on tickets issued in the U.S.

(a) * * *

(3) Issuing carriers and their agents shall collect PFCs based on the itinerary at the time of issuance.

(i) Any change in itinerary initiated by a passenger that requires an adjustment to the amount paid by the passenger is subject to collection or refund of the PFC as appropriate.

(ii) Failure to travel on a nonrefundable or expired ticket is not a change in itinerary. If the ticket purchaser is not permitted any fare refund on the unused ticket, the ticket purchaser is not permitted a refund of any PFC associated with that ticket.

* * * * *

16. Amend § 158.47 by revising paragraphs (a) and (c)(3) to read as follows:

§ 158.47 Collection of PFCs on tickets issued outside the U.S.

(a) For tickets issued outside the U.S., an air carrier or foreign air carrier may follow the requirements of either § 158.45 or this section, unless the itinerary is for travel wholly within the U.S. Air carriers and foreign air carriers must comply with § 158.45 where the itinerary is for travel wholly within the U.S. regardless of where the ticket is issued.

* * * * *

(c) * * *

(3) Issuing carriers and their agents shall collect PFCs based on the itinerary at the time of issuance.

(i) Any change in itinerary initiated by a passenger that requires an adjustment to the amount paid by the passenger is subject to collection or refund of the PFC as appropriate.

(ii) Failure to travel on a nonrefundable or expired ticket is not a change in itinerary. If the ticket purchaser is not permitted any fare refund on the unused ticket, the ticket purchaser is not permitted a refund of any PFC associated with that ticket.

* * * * *

17. Amend § 158.49 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 158.49 Handling of PFCs.

* * * * *

(b) Collecting carriers must account for PFC revenue separately. PFC revenue may be commingled with the air carrier's other sources of revenue except for covered air carriers discussed in paragraph (c) of this section. PFC revenues held by an air carrier or an agent of the air carrier after collection are held in trust for the beneficial interest of the public agency imposing the PFC. Such air carrier or agent holds neither legal nor equitable interest in the PFC revenues except for any handling fee or interest collected on unremitted proceeds as authorized in § 158.53.

(c)(1) A covered air carrier must segregate PFC revenue in a designated separate PFC account. Regardless of the amount of PFC revenue in the covered air carrier's account at the time the bankruptcy petition is filed, the covered air carrier must deposit into the separate PFC account an amount equal to the average monthly liability for PFCs collected under this section by such air carrier or any of its agents.

(i) The covered air carrier is required to create one PFC account to cover all PFC revenue it collects. The designated PFC account is solely for PFC transactions and the covered air carrier must make all PFC transactions from that PFC account. The covered air carrier is not required to create separate PFC accounts for each airport where a PFC is imposed.

(ii) The covered air carrier must transfer PFCs from its general accounts into the separate PFC account in an amount equal to the average monthly liability for PFCs as the ''PFC reserve.'' The PFC reserve must equal a one-month average of the sum of the total PFCs collected by the covered air carrier, net of any credits or handling fees allowed by law, during the past 12-month period of PFC collections immediately before entering bankruptcy.

(iii) The minimum PFC reserve balance must never fall below the fixed amount defined in paragraph (c)(1)(ii) of this section.

(iv) A covered air carrier may continue to deposit its PFCs into its general operating accounts combined with ticket sales revenue. However, at least once every business day, the covered air carrier must remove all PFC revenue (''Daily PFC amount'') from those accounts and transfer it to the new PFC account. An estimate based on

1/30 of the PFC reserve balance is permitted in substitution of the Daily PFC amount.

(v) If the covered air carrier uses an estimate rather than the daily PFC amount, the covered air carrier shall reconcile the estimated amount with the actual amount of PFCs collected for the prior month (''Actual Monthly PFCs''). This reconciliation must take place no later than the 20th day of the month (or the next business day if the date is not a business day). In the event the actual monthly PFCs are greater than the aggregate estimated PFC amount, the covered air carrier will, within one business day of the reconciliation, deposit the difference into the PFC account. If the actual monthly PFCs are less than the aggregate estimated PFC amount, the covered air carrier will be entitled to a credit in the amount of the difference to be applied to the daily PFC amount due.

(vi) The covered air carrier is permitted to recalculate and reset the PFC reserve and daily PFC amount on each successive anniversary date of its bankruptcy petition using the methodology described above.

(2) If a covered air carrier or its agent fails to segregate PFC revenue in violation of paragraph (c) of this section, the trust fund status of such revenue shall not be defeated by an inability of any party to identify and trace the precise funds in the accounts of the air carrier.

(3) A covered air carrier and its agents may not grant to any third party any security or other interest in PFC revenue.

(4) A covered air carrier that fails to comply with any requirement of paragraph (c) of this section, or causes an eligible public agency to spend funds unnecessarily to recover or retain payment of PFC revenue, must compensate that public agency for those costs incurred to recover the PFCs owed.

(5) The provisions of paragraph (b) of this section that allow the commingling of PFCs with other air carrier revenue do not apply to a covered air carrier.

(d) All collecting air carriers must disclose the existence and amount of PFC funds regarded as trust funds in their financial statements.

18. Revise § 158.53 to read as follows:

§ 158.53 Collection compensation.

(a) As compensation for collecting, handling, and remitting the PFC revenue, the collecting air carrier is entitled to:

(1) $0.11 of each PFC collected.

(2) Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

(b) A covered air carrier that fails to designate a separate PFC account is prohibited from collecting interest on the account. Where a covered air carrier maintains a separate PFC account in compliance with § 158.49(c), it will receive the interest on PFC accounts as described in paragraph (a)(2) of this section.

(c)(1) Collecting air carriers may file collection cost data periodically to the FAA after the agency issues a notice in the **Federal Register** that specifies the information and deadline for filing the information. Submission of the information is voluntary. The requested information must include data on interest earned by the air carrier on PFC revenue and audited air carrier collection, handling, and remittance costs in the following categories:

(i) Credit card fees;

(ii) Audit fees;

(iii) PFC disclosure fees;

(iv) Reservations costs;

(v) Passenger service costs;

(vi) Revenue accounting, data entry, accounts payable, tax, and legal fees;

(vii) Corporate property department costs;

(viii) Training for reservations agents, ticket agents, and other departments;

(ix) Ongoing carrier information systems costs;

(x) Ongoing computer reservations systems costs; and

(xi) Airline Reporting Corporation fees.

(2) Any new compensation level determined by the FAA's analysis of data filed under paragraph (b)(1) of this section will replace the level identified in paragraph (a)(1) of this section.

Subpart D—Reporting, Recordkeeping and Audits

19. Amend § 158.63 by revising paragraphs (a) and (c) to read as follows:

§ 158.63 Reporting requirements: Public agency.

* * * * *

(a) The public agency must provide quarterly reports to air carriers collecting PFCs for the public agency with a copy to the appropriate FAA Airports Office. The quarterly report must include:

(1) Actual PFC revenue received from collecting air carriers, interest earned, and project expenditures for the quarter;

(2) Cumulative actual PFC revenue received, interest earned, project expenditures, and the amount committed for use on currently approved projects, including the quarter;

(3) The PFC level for each project; and

(4) Each project's current schedule.

* * * * *

(c) For medium or large hub airports, the public agency must provide to the FAA, by July 1 of each year, an estimate of PFC revenue to be collected for each airport in the following fiscal year.

20. Revise § 158.65 to read as follows:

§ 158.65 Reporting requirements: Collecting air carrier.

(a) Each air carrier collecting PFCs for a public agency must file quarterly reports to the public agency unless otherwise agreed by the collecting air carrier and public agency, providing an accounting of funds collected and funds remitted.

(1) Unless otherwise agreed by the collecting air carrier and public agency, reports must state:

(i) The collecting air carrier and airport involved,

(ii) The total PFC revenue collected,

(iii) The total PFC revenue refunded to passengers,

(iv) The collected revenue withheld for reimbursement of expenses under § 158.53, and

(v) The dates and amounts of each remittance for the quarter.

(2) The report must be filed by the last day of the month following the calendar quarter or other period agreed by the collecting carrier and public agency for which funds were collected.

(b) A covered air carrier must provide the FAA with:

(1) A copy of its quarterly report by the established schedule under paragraph (a) of this section, and

(2) A monthly PFC account statement delivered not later than the fifth day of the month. This monthly statement must include:

(i) The balance in the account on the first day of the month;

(ii) The total funds deposited during the month;

(iii) The total funds dispersed during the month; and

(iv) The closing balance in the account.

21. Amend § 158.67 by revising paragraph (c)(2) to read as follows:

§ 158.67 Recordkeeping and auditing: Public agency.

* * * * *

(c) * * *

(2) Conducted as part of an audit under Office of Management and Budget Circular A–133 (the Single Audit Act of 1984, Pub. L. 98–502, and the Single Audit Act Amendments of 1996, Pub. L. 104–156) provided the PFC is specifically addressed by the auditor.

* * * * *

Subpart E—Termination

22. Revise § 158.81 to read as follows:

§ 158.81 General.

This subpart contains the procedures for terminating PFCs or loss of Federal airport grant funds for violations of this part or 49 U.S.C. 40117. This subpart does not address the circumstances under which authority to collect PFCs may be terminated for violations of 49 U.S.C. 47523 through 47528.

§ 158.97 [Removed]

23. Remove § 158.97.

24. Amend appendix A by revising paragraphs 10 and 12 of section B to read as follows:

Appendix A to Part 158—Assurances

* * * * *

B. * * *

* * * * *

10. Recordkeeping and Audit. It will maintain an accounting record for audit purposes for 3 years after physical and financial completion of the project. All records must satisfy the requirements of 14 CFR part 158 and contain documentary evidence for all items of project costs.

* * * * *

12. Compliance with 49 U.S.C. 47523 through 47528. It understands 49 U.S.C. 47524 and 47526 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with those sections of the United States Code or with the implementing regulations published under the Code.

Issued in Washington, DC, on January 26, 2006.

Dennis E. Roberts,

Director, Office of Airport Planning and Programming.

[FR Doc. 06–896 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 203 and 205

[Docket No. 2005N–0428]

Distribution of Blood Derivatives by Registered Blood Establishments that Qualify as Health Care Entities; Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements and Administrative Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the regulations to allow certain registered blood establishments that qualify as health care entities to distribute drug products that are derivatives of blood (blood derivatives). This proposed rule, which is specific to registered blood establishments and the distribution of blood derivatives, if finalized, would amend certain limited provisions of the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA) and the FDA Modernization Act of 1997. As currently written, these regulations, among other things, restrict the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs purchased by hospitals and other health care entities.

DATES: Submit written or electronic comments on the proposed rule by May 2, 2006.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0428, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen Swisher, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The PDMA (Public Law 100–293) was enacted on April 22, 1988, and was modified by the PDA (Public Law 102–353, 106 Stat. 941) on August 26, 1992. The PDMA, as modified, amended the Federal Food, Drug, and Cosmetic Act (the act) to establish restrictions and requirements relating to various aspects of human prescription drug marketing and distribution. Among other things, the PDMA prohibited, with certain exceptions, the sale, purchase, or trade (or offer to sell, purchase, or trade) of prescription drugs that were purchased by hospitals or other health care entities. Section 503(c)(3)(A)(ii)(I) of the act (21 U.S.C. 353(c)(3)(A)(ii)(I)). Section 503(c)(3) also states that ''[f]or purposes of this paragraph, the term 'entity' does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law * * *.''

In the **Federal Register** of March 14, 1994 (59 FR 11842), we issued a proposed rule to implement those PDMA sections that were not implemented by the final rule of September 14, 1990, that set forth Federal guidelines for State licensing of wholesale drug distributors (55 FR 38012). The proposed rule contained provisions on prescription drug reimportation; wholesale distribution of prescription drugs by unauthorized distributors; the resale of prescription drugs by hospitals, health care entities, and charitable institutions; and distribution of prescription drug samples. After consideration of comments, we issued a final rule in the **Federal Register** of December 3, 1999

(64 FR 67720) (''the final rule''), with an effective date of December 4, 2000.

After publication of the final rule, we received many letters on, and held several meetings to discuss the implications of, the final regulations for registered blood establishments that distribute blood-derived products and provide health care as a service to hospitals and patients. According to comments received before the final rule took effect, implementing the final rule as published would interfere with longstanding relationships between blood centers and other health care providers such as hospitals, hemophilia treatment centers, and other providers.

The blood establishment industry asserted that the regulations, particularly the definition of ''health care entity'' in § 203.3(q) (21 CFR 203.3(q)), would, to the detriment of the public health, severely inhibit its ability to provide medical care and services and might disrupt the distribution of blood derivatives, to what may be otherwise unserved or inadequately served segments of the public. Specifically, § 203.20 (21 CFR 203.20) of the final rule as written states, in relevant part, that no person may sell, purchase, or trade, or offer to sell, purchase, or trade any prescription drug that was purchased by a health care entity (§ 203.20(a)).

''*Health care entity*'' is defined in § 203.3(q) as any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or wholesale distributor. That definition specifically states that, ''A person cannot simultaneously be a 'health care entity' and a retail pharmacy or wholesale distributor.'' ''*Wholesale distributor*'' is defined in § 203.3(dd) (21 CFR 203.3(dd)) as any person engaged in wholesale distribution of prescription drugs, and ''*wholesale distribution*'' is defined in § 203.3(cc) (21 CFR 203.3(cc)) as ''distribution of prescription drugs to persons other than a consumer or patient * * *.'' The final rule made clear that those definitions should be interpreted to mean that an establishment that meets the definition of a health care entity would not be allowed to engage in wholesale distribution. The **Federal Register** of December 3, 1999, stated ''The agency declines to revise the definition of health care entity or otherwise revise the proposed rule to permit health care entities to engage in the wholesale distribution of blood derivatives or other prescription drug products.'' (64 FR 67720 at 67726).

Thus, under the final rule as written, blood establishments functioning as health care entities would not be allowed to engage in wholesale distribution of prescription drugs except for blood and blood components intended for transfusion, which are exempted from the regulations under § 203.1 (21 CFR 203.1). As discussed in the preamble to the final rule (64 FR 67720 at 67725 to 67727), blood derivatives are not blood components. Therefore, should the final rule go into effect as written, registered blood establishments that qualify as health care entities could not distribute blood derivatives.

Blood derivatives that are prescription drugs include the following: Albumin, antihemophilic factor, Factor IX Complex, alpha-1 anti-tripsin, and immune globulin. Therefore, under the rule as written, a blood center could not resell blood derivatives to entities other than consumers or patients and simultaneously provide health care, such as medical services associated with those products.

On May 3, 2000, we delayed until October 1, 2001, the effective date of several provisions of the final rule and reopened the administrative record, giving interested persons until July 3, 2000, to submit written comments (65 FR 25639). This delay extended to the definition of ''*health care entity*'' in § 203.3(q), as applied to the wholesale distribution of blood derivatives by health care entities. The purpose of delaying the effective date for these provisions was to give us time to obtain more information about the possible consequences of implementing these provisions and to further evaluate the issues involved (65 FR 25639 at 25641).

On September 19, 2000, we announced a public hearing to discuss certain requirements of the final rule (65 FR 56480), including the provisions relating to the distribution of blood derivatives by entities that meet the definition of ''health care entity.'' We held the public hearing to develop an adequate factual basis to use to determine whether it is in the public health interest to modify or change the requirements in the final rule (65 FR 56480 at 56483).

We developed a list of questions to promote a more useful discussion at the public hearing. These questions related to: The distribution systems available for blood derived products; the effect of the final rule on these distribution systems, including adverse public health consequences or economic costs; whether excluding blood derived products from the final rule's restrictions would increase the risk of distribution of counterfeit, expired, adulterated, misbranded, or otherwise unsuitable products; and the pricing of blood-derived products sold to health care entities (65 FR 56480 at 56483) with regard to blood derivatives, as well as other unrelated issues associated with wholesale distribution of drugs. This proposed rule addresses only blood derivatives and does not address the other stayed requirements in the final rule relating to wholesale distribution of prescription drugs by distributors that are not authorized distributors of record (69 FR 8105, February 23, 2004).

The public hearing was held on October 27, 2000, and comments were accepted until November 20, 2000. In the **Federal Register** of March 1, 2001, we announced our decision to further delay until April 1, 2002, the applicability of § 203.3(q) to the wholesale distribution of blood derivatives by health care entities (66 FR 12850). Further delays of effective dates followed until December 1, 2006, to give us additional time to consider whether regulatory changes are appropriate and, if so, to initiate such changes (67 FR 6645, February 13, 2002; 68 FR 4912, January 31, 2003; 69 FR 8105, February 23, 2004).

We now propose to amend the regulations. The proposed amendments are narrow and would allow certain registered blood establishments that qualify as health care entities to distribute blood derivatives.

II. The Blood Establishments' Concerns

In response to the final rule, we received numerous comments arguing that blood establishments should be allowed to continue performing both functions of providing health care services and distributing blood derivatives. Some comments asserted that although the distribution of derivatives and the provision of health care services are small parts of a blood establishment's activities, they are vital to serving public health needs.

At the October 2000 public hearing, we heard from four interested parties on this subject. Comments asserted that we had reached the wrong conclusion with respect to restrictions on blood establishments' activities. In addition to restating earlier objections made in response to the proposed rule, the comments presented new objections and new information, including more detailed descriptions of the health care services they provide and the derivatives they distribute. They also offered several potential regulatory solutions.

We received no comments taking the position that the regulations should

remain unchanged. We received from a national trade organization that represents blood establishments additional comments about the scope of products they distribute for treating blood-related disorders, which include drugs that are not blood derivatives. The comment stated the exemption should extend to any distribution of blood-related products by blood centers, not just to blood derivatives because blood centers also distribute blood-related products not always from human sources. In this proposed rule, we are seeking additional information on the distribution of other prescription drug products by registered blood establishments.

We have considered all comments and have changed our position from that expressed in the preamble discussion in the December 3, 1999, final rule (64 FR 67720). We now propose to allow certain registered blood establishments that qualify as health care entities to distribute blood derivatives. We are distinguishing blood derivatives from other prescription drugs when sold, purchased, or traded (or offered to sell, purchase, or trade) by a registered blood establishment that qualifies as a health care entity, provided all health care services offered by the establishment are related to its activities as a registered blood establishment.

III. The Proposed Amendments

Our current proposal modifies part 203 (21 CFR part 203) to allow a registered blood establishment [1] that provides health care services and that also distributes blood derivatives to continue in both capacities, as long as the blood establishment does not provide health care services unrelated to its activities as a registered blood establishment.

We have changed our position from that discussed in the preamble to the final rule (64 FR 67720 at 67726) because of new information and a better understanding of the industry and how the final rule, if enforced, might affect the public health. For example, according to testimony at the public hearing held on October 27, 2000, ''more than 15 percent of all U.S. blood derivative products are distributed by community and Red Cross blood centers, with Red Cross alone accounting for 10 percent.'' [2] Those blood centers qualify as health care entities because, in addition to collecting blood and plasma and distributing blood derivatives, they also provide certain health care services to the hospitals and health care entities they serve, including therapeutic phlebotomy, plasma exchange, stem cell and cord blood collection and processing, and medical expertise on the appropriate use of the blood derivatives they distribute.[3] According to the testimony, the majority of local hospitals do not have that kind of medical expertise, and as a practical matter could not obtain and maintain such expertise.[4]

Prohibiting community and Red Cross blood centers that qualify as health care entities from distributing blood derivatives would have a particularly high impact on certain segments of patients. For example, the Red Cross testified that ''85 percent of their anti-hemophilic factor is supplied directly to health care entities. They stated that implementation of the final rule would deny hemophilia patients access to this product because many treatment centers are smaller entities that are not supported by large distributors.'' [5] Additionally, the Red Cross stated that ''15 percent of their IVIG (intravenous immunoglobulin) products and 10 percent of their albumin product are provided directly to healthcare providers and account for 26,000 to 69,000 infusions annually.'' [6]

We now propose to amend § 203.22 (21 CFR 203.22), which contains exclusions from the sales restrictions in § 203.20 (21 CFR 203.20). Proposed new paragraph (h) provides a limited exception for registered blood establishments that qualify as a health care entity. Under the proposed exclusion, the sales restrictions in § 203.22 would not apply to the sale, purchase, or trade of (or the offer to sell, purchase, or trade) any blood derivatives by a registered blood establishment that qualifies as a health care entity as long as all of the health care services that it provides are related to its activities as a registered blood establishment. The following are examples of such health care services: therapeutic hemapheresis, therapeutic phlebotomies, plasma exchange, and transfusion services. For clarification, a registered blood establishment's ordinary donor screening activities for donor suitability (e.g., measuring a donor's temperature, blood pressure, and hematocrit or hemoglobin) are not considered health care services for the purposes of § 203.3(q).

A registered blood establishment that provides any health care services unrelated to its activities as a registered blood establishment would not be eligible for the exclusion. For example, if a registered blood establishment provides health care services such as administering antibiotics to treat a respiratory infection unrelated to transfusion medicine, we do not consider this to be a health care service related to the operation of a blood establishment. Therefore, the blood establishment would not be permitted to distribute blood derivatives. Without that limit on the exclusion, the rule would encourage hospitals and other health care entities to register as blood establishments strictly to take advantage of this exception. Allowing such entities that are not primarily blood establishments to distribute blood derivatives could raise the same concerns that the PDMA was intended to address. The prohibition against sales by health care entities was prompted in part because of the temptation for such entities to sell for-profit drugs acquired at below-wholesale prices.

The proposed exclusion in § 203.22 applies only to the distribution of blood derivatives by a registered blood establishment and not by other entities. The regulations implementing the PDMA, as modified, would continue to apply to these other entities.

Although the public hearing and additional comments received on the final rule provided us with an adequate factual basis to determine whether the requirements in the final rule should be modified in the interest of public health, new information provided with respect to the function of registered blood establishments indicates that additional input is needed. We are seeking information about the functions of registered blood establishments to assist us in making a decision whether further modification of the final rule is necessary in the interests of public health.

Proposed § 203.22(h) includes an ''exclusion'' that would allow certain registered blood establishments that qualify as health care entities to distribute blood derivatives. In consideration of the issues that the industry raised, we seek comments on whether this exclusion should be

[1] Establishment is defined as ''a place of business under one management at one general physical location. The term includes, among others, human blood and plasma donor centers, blood banks, transfusion services, other blood product manufacturers and independent laboratories that engage in quality control and testing for registered blood product establishments.'' (§ 607.3 (21 CFR 607.3)) All owners or operators of establishments that engage in the manufacturing of blood products are required to register, under section 510 of the Federal Food, Drug, and Cosmetic Act (§ 607.7 (21 CFR 607.7)).

[2] U.S. Food and Drug Administration, ''The Prescription Drug Marketing Act: Report to Congress,'' June 2001, p.17 and p.18.

[3] Id., at 18.

[4] Id.

[5] Id.

[6] Id.

expanded to allow registered blood establishments that also provide health care services to distribute drugs other than blood derivatives that might be used to treat blood disorders. We are seeking information that includes, but is not limited to, the number of entities affected; how often drugs used to treat blood disorders are distributed by registered blood establishments and whether the nature of this practice is critical; and, any negative impact on public health if the exclusion allows only for the distribution of blood derivatives. Actual numbers, statistics, and examples would help us determine the best course of action. In addition, we seek comments on whether hemophilia treatment centers, which are health care entities but are not registered blood establishments, should be included within the scope of this exception.

IV. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies 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. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) is not required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule proposes a narrow revision that is intended to maintain the status quo, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

VII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 203

Drugs, Labeling, Manufacturing, Prescription drugs, Reporting and recordkeepng requirements, Warehouses.

21 CFR Part 205

Intergovernmental relations, Prescription drugs, Reporting and recordkeeping requirements, Security measures, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that parts 203 and 205 be amended as follows:

PART 203—PRESCRIPTION DRUG MARKETING

1. The Authority citation for 21 CFR part 203 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 351, 352, 353, 360, 371, 374, 381.

2. Section 203.3 is amended by revising paragraph (q) to read as follows:

§ 203.3 Definitions.

* * * * *

(q) *Health care entity* means any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or any wholesale distributor. Except as provided in § 203.22(h), a person cannot simultaneously be a ''health care entity'' and a retail pharmacy or wholesale distributor.

* * * * *

3. Section 203.22 is amended by adding paragraph (h) to read as follows:

§ 203.22 Exclusions.

* * * * *

(h) The sale, purchase, or trade of, or the offer to sell, purchase, or trade any blood derivative by a registered blood establishment that qualifies as a health care entity, as long as all of the health care services that it provides are related to its activities as a registered blood establishment.

PART 205—GUIDELINES FOR STATE LICENSING OF WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS

4. The Authority citation for 21 CFR part 205 continues to read as follows:

Authority: 21. U.S.C. 351, 352, 353, 371, 374.

5. Section 205.3 is amended by revising paragraph (h) to read as follows:

§ 205.3 Definitions

* * * * *

(h) Health care entity means any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or any wholesale distributor. Except as provided in § 203.22(h), a person cannot simultaneously be a ''health care entity'' and a retail pharmacy or wholesale distributor.

Dated: November 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–1225 Filed 1–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Chapter I

[USCG–2004–19615]

Exclusion Zones for Marine LNG Spills

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Coast Guard announces the availability of its response to a petition for rulemaking requesting issuance of regulations establishing thermal and vapor dispersion exclusion zones for marine spills of liquefied natural gas (LNG), by the City of Fall River, MA. The Coast Guard has determined that such a rulemaking project is unnecessary.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, call Commander John Cushing, U.S. Coast Guard, telephone 202–267–1043 or via e-mail at j*cushing@comdt.uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: The Coast Guard previously published three documents with requests for comments regarding the petition for a rulemaking by the City of Fall River, MA, on the subject of thermal and vapor dispersion exclusion zones for marine spills of LNG [see 69 FR 63979, Nov. 3, 2004; 70 FR 11912, March 10, 2005; 70 FR 36363, June 23, 2005]. Supplementary information was posted and made available in the docket (see ''Viewing the Notice''). We received and reviewed 91 comments. After reviewing the comments and reaching a decision, we wrote a letter back to the petitioner denying the petition (also available in the docket).

The comments in support of establishing exclusion zones around transiting LNG ships focused on the consequences of a major LNG spill in close proximity to a densely populated urban area, particularly Fall River, MA.

The comments in opposition to the establishment of the aforementioned exclusion zones cited the proven safety record of the LNG industry, the robust safety features designed into LNG ships, and the effective safety and security procedures that have already been established by regulation and industry best practices and guidelines.

Taking into account the proven safety record of the LNG ships, we determined exclusion zone regulations are not needed because we already implemented policy (on June 14, 2005) through our Navigation and Vessel Inspection Circular (NVIC) 05–05, Guidance on Assessing the Suitability of a Waterway for Liquefied Natural Gas (LNG) Marine Traffic. This NVIC established a comprehensive process for a Waterway Suitability Assessment (WSA) to be completed and then reviewed and validated by the Coast Guard, in consultation with stakeholders at the port, to ensure all safety and security issues relating to the marine transportation of LNG for a proposed waterfront LNG facility are addressed.

Viewing the Notice: To view the notice and related documents, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this notice (19615), and click on ''Search.'' You may also visit the Docket Management Facility in 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.

Dated: January 23, 2006.

Howard L. Hime,

Acting Director of Standards, Office of Prevention.

[FR Doc. 06–920 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM21

Medical: Informed Consent—Designate Health Care Professionals To Obtain Informed Consent

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document would amend U.S. Department of Veterans Affairs (VA) medical regulations on informed consent. The proposed rule authorizes VA to designate additional categories of health care professionals to obtain informed consent and sign the consent form.

DATES: Comments must be received on or before: April 3, 2006.

ADDRESSES: Written comments may be submitted by mail or hand delivery to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax comments to (202) 273–9026; or e-mail comments through *hhtp://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AM21''. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Ruth Cecire, PhD, Policy Analyst, Ethics Policy Service, National Center for Ethics in Health Care (10E), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; 202–501–2012 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 7331 of title 38, United States Code (U.S.C.), directs the Secretary of Veterans Affairs to promulgate regulations to ensure that, to the maximum extent practicable all patient care carried out under the authority of title 38 is accomplished with the informed consent of the patient or the patient's surrogate. These VA medical regulations, set forth at 38 CFR 17.32 and titled ''Informed Consent'', were published in the **Federal Register** as a final rule on October 2, 1997 (62 FR 53961).

The proposed rule would amend VA medical regulations on informed consent and bring VA practice in line with broader community standards of care. Specifically, it would allow VA to designate appropriately trained health care professionals, (*e.g.* advance practice nurses and physician assistants) to conduct the informed consent discussion and sign the consent form. These changes will be documented in a revision to VHA Handbook 1004.1, Informed Consent for Clinical Treatments and Procedures. Any future expansion of the categories of designated health care professionals will be communicated to the field by the Under Secretary for Health's Office.

In the years since the informed consent regulation was first published, the way in which VA delivers health care to veterans has changed dramatically. In the past most VA health care was provided primarily in an inpatient setting and the informed consent discussion was conducted by the physician treating the patient. Today there is more of a team approach to clinical care. Other highly trained health care professionals work with the treating practitioner to educate patients and respond to their questions about the potential risks and benefits of and

alternatives to the recommended treatment or procedure.

Under the current definition of practitioner, residents may obtain the informed consent and sign the consent form even if they are not clinically privileged. This rule would extend that exception to other appropriately trained health care professionals, *e.g.*, advanced practice nurses and physician assistants, if designated by the VA health care facility to perform this role. Allowing these health care professionals, in addition to residents, to complete the informed consent process by signing the form does not preclude discussion about the recommended treatment or procedure with the treating practitioner. Nor does it eliminate the responsibility of that practitioner to ensure that patients receive necessary information to make informed decisions and that these decisions are then appropriately documented in the health record.

We are also making nonsubstantive changes to make the terminology used in the regulation consistent with current Department practice. These include changing ''health-care'' to ''health care'' and ''medical record'' to ''health record'' throughout the section.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The existing information collections associated with the informed consent process have been approved by OMB under control number 2900–0583.

Executive Order 12866—Regulatory Planning and Review

The Department of Veterans Affairs (VA) has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

The VA concludes that this proposed rule is a significant regulatory action under the Executive Order since it raises novel legal and policy issues under Section 3(f)(4). The VA concludes, however, that this proposed rule does not meet the significance threshold of $100 million effect on the economy in any one year under Section 3(f)(1). The VA requests comments regarding this determination, and invites commenters to submit any relevant data that will assist the agency in estimating the impact of this rulemaking.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 20, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out above, VA proposes to amend 38 CFR part 17 to read as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

2. Section 17.32 is amended by:

a. Removing ''health-care'' each time it appears and adding in its place ''health care''.

b. Removing ''medical record'' each time it appears and adding in its place ''health record''.

c. In the list of definitions in paragraph (a), revising the definition of ''Practitioner''.

The revision reads as follows:

§ 17.32 Informed consent and advance care planning.

(a) * * *

Practitioner. Any physician, dentist, or health care professional who has been granted specific clinical privileges to perform the treatment or procedure. For the purpose of obtaining informed consent for medical treatment, the term practitioner includes medical and dental residents and other appropriately trained health care professionals designated by VA regardless of whether they have been granted clinical privileges.

* * * * *

[FR Doc. E6–1218 Filed 1–31–06; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0012; FRL–8027–3]

Approval and Promulgation of Implementation Plans: Minnesota: Alternative Public Participation Process

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is soliciting comment on the Minnesota Pollution Control Agency's (MPCA's) use of informing the public of upcoming rulemakings and public hearings via the internet as opposed to the past practice of using the newspaper or some other widely accessible printed media. Comments

received may impact EPA's approval of the following requests made by the MPCA.

The EPA is proposing to approve a revision to the Minnesota State Implementation Plan (SIP) that will establish, pursuant to regulations on public hearings, an alternative public participation process for certain SIP revisions. On December 7, 2005, the Minnesota Pollution Control Agency (MPCA) submitted a request to change certain procedures involving the public hearing and notification process as it applies to SIPs. Minnesota held a public hearing on this SIP revision request on November 17, 2005. In its request, the MPCA has identified a number of types of SIP revisions that are noncontroversial and for which the public has historically shown little or no interest. For this limited number of SIP revisions, the MPCA would, if approved, offer the opportunity for a public hearing, but would not hold a hearing if one was not requested. The EPA agrees that the SIP types that have been identified by the MPCA have historically been noncontroversial and that offering the public the opportunity to request a public hearing rather than holding one automatically does not limit or curtail the public participation process.

Also, EPA is proposing to approve, pursuant to regulations on public hearings, a revision to the Minnesota SIP that provides that SIP revisions for which a public hearing was held at the time of the MPCA rulemaking, and where such public hearing met all the criteria necessary for a SIP public hearing, including, as discussed in this proposal, effective electronic notice, and the public was notified that the rule would be submitted as a SIP revision, no separate public hearing for SIP purposes would be held. MPCA included this revision to the Minnesota SIP in its December 7, 2005 request to EPA to revise certain provisions involving the SIP public hearing and notification process, and, correspondingly, included this revision in the public hearing which MPCA held on November 17, 2005. EPA agrees that a public hearing held at the time of the MPCA rulemaking, which meets the criteria for a SIP public hearing, including notice requirements, precludes the need for a separate public hearing for SIP purposes.

DATES: Comments must be received on or before March 3, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0012, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov.*
- Fax: (312) 886–5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0012. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. *The www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353–6960 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we'' or ''us'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information.
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
II. What Action Is EPA Taking Today?
A. Automatic Public Hearing Is Not Necessary Because SIP Revision Is Either Nonsubstantive or Noncontroversial
B. Equivalent Hearing to a Public Hearing
C. Table Summarizing Proposed Alternative Public Hearing Processes
D. Use of Internet Notification of Upcoming Rulemakings and Public Hearings Versus Using Newspapers
E. Summary
III. Statutory and Executive Order Reviews

I. General Information

A. Does This Action Apply to Me?

This action applies to anyone who would participate in the public rulemaking process in Minnesota. This proposal may be of particular interest to parties who prefer notification of MPCA rulemakings and hearings through printed media, such as the newspaper, versus electronic media such as postings on the internet.

This proposal does not seek to limit the public participation process; rather, it is an effort to eliminate unnecessary public hearings and save MPCA time and resources. MPCA has identified a number of different types of SIP revisions that have received little, if any, public interest in the past and, when public hearings were held, no one

attended these hearings. These public hearings are, therefore, viewed as consuming both valuable time and resources that the MPCA could utilize better on other projects. For these types of revisions, the state has revised its procedures to provide that public hearings will not automatically be held. Rather, the public will be provided the opportunity to request a public hearing and a hearing will be held only if requested. This revision regarding public hearings will not affect the public's ability to submit written comments on any SIP revision.

Also, MPCA has requested that when a public hearing that meets specific requirements has already been held in the state that this would be found to be the equivalent of a SIP public hearing.

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

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

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Additional Instructions for Specific Comments. EPA is soliciting specific comments on MPCA's use of the internet to inform the public of upcoming rulemakings and public hearings. In the past, before computer usage was as widespread as it is today, states would inform the public of upcoming public hearings by placing advertisements in the newspaper. Now that the use of computers and the internet is considered commonplace, we would like feedback on whether it is appropriate to no longer advertise upcoming rulemakings and public hearings in a printed format and to shift to an all electronic notification through use of internet publication. Additional information regarding these practices will follow in this notice. It is important we receive comments on this aspect of proposal because it may impact our proposed approval of the alternative public hearing processes submitted by MPCA.

II. What Action Is EPA Taking Today?

EPA is proposing to, under 40 CFR 51.102(g), approve an alternative public participation process that would apply to certain SIP revisions in the state of Minnesota. The goal of this new process is to preserve time and resources of the MPCA by eliminating automatic public hearings for the types of SIP revisions that have historically generated little, if any, public interest. This process, however, preserves the opportunity for the public to request a SIP public hearing.

Currently, 40 CFR 51.102 and Clean Air Act section 110(a)(2) and 110(l) require the state to hold public hearings for all SIP revisions prior to submitting such revisions to EPA for approval. This is true for all SIPs regardless of how minor the action or how little public interest has been expressed on the SIP revision under consideration. Under federal regulations found at 40 CFR 51.102(g)(2), alternative procedures may be approved provided they still ensure adequate public notification and public participation.

On December 7, 2005, the MPCA requested that its SIP be amended to incorporate alternative public participation procedures into the Minnesota SIP. The MPCA has identified limited types of SIP revisions that, historically, have received little, if any, public interest and when public hearings have been held for these SIP revisions, no one attended. For these types of SIP revisions, MPCA would instead offer the opportunity for a public hearing. Under this alternative method of public participation, only one request would be necessary and a public hearing would be held.

MPCA has also requested that when a state public hearing has been held on an MPCA rulemaking, that can be considered the equivalent of a SIP public hearing, when measured against the criteria for a SIP public hearing as provided at 40 CFR 51.102(d)–(f) [see the discussion on the use of electronic notification of rulmakings and public hearing in section II. C. of this notice], and where the public was notified that such rule would be submitted as a SIP revision, then a public hearing for SIP purposes only need not be held.

Included in MPCA's SIP amendment request were two exhibits. Exhibit 1 is a table describing the various types of SIP submittals that are made by the state. In the table, each SIP revision category is described and a reason is given why a public hearing should automatically be held or why an automatic public hearing is not necessary but the opportunity to request a public hearing still exists. The phrase ''Administrative Permit Amendments'' is used in Exhibit 1 and Exhibit 2 identifies how that phrase is defined by Minnesota Rules.

While Exhibit 1 describes all of the various SIP revisions that MPCA might make, for the purposes of this rulemaking we will discuss only: (1) the categories for which MPCA is requesting that public hearings would be held only if requested and (2) the category for which MPCA believes the equivalent of a SIP public hearing has already been held which obviates the need for a public hearing for SIP purposes only.

A. Automatic Public Hearing Is Not Necessary Because SIP Revision Is Either Nonsubstantive or Noncontroversial

In these instances, MPCA indicates that the public will have the opportunity to request a public hearing. The MPCA will schedule a tentative hearing, but stating in the public notice document (which is published in the Minnesota State Register in an online format only) that the hearing will not be held if there are no affirmative requests for it to be held.

1. Purely Administrative Changes—MPCA gives the examples of correcting typographical or grammatical errors. There is a presumption that this is not a change that would be of public concern as it is not substantive.

2. De minimis change to a ''secondary'' compliance requirement—Here, MPCA defines ''secondary'' requirement as a requirement that supports a ''primary'' requirement for a National Ambient Air Quality Standard (NAAQS). ''Primary'' requirements include, but are not limited to, restrictions such as an emission limit or fuel usage limit. An example of *de minimis* change to a ''secondary'' requirement could include, a change to a monitoring or testing method that is within the scope of the method and does not adversely impact the accuracy or precision of the method (*e.g.,* increasing sample volume above the minimum required by the method in order to ensure an adequate detection limit is achieved.) There is a presumption of no public interest in these types of SIP revisions because the changes described here are ''*de minimis*'' and should not adversely affect compliance with the primary NAAQS.

3. Changes categorized as ''administrative amendments'' under MPCA's operating permit rules—MPCA included, as Exhibit 2, the portion of the Minnesota Rules that define ''administrative amendments.'' Minn. R. 7077.1400, subp. 1, as reproduced below, defines the term ''administrative amendments'' as including the following actions:

- An amendment to correct a typographical error;
- An amendment to change the name, mailing address, or telephone number of any person identified in the permit, or that reflects a similar minor administrative change at the permitted facility. A change in the stationary source's location of operation is not covered by this item;
- An amendment requiring the permittee to comply with additional, more frequent, or expanded, testing, monitoring, recordkeeping, or reporting requirements;
- An amendment to eliminate monitoring, recordkeeping, or reporting requirements if: (1) The requirements are rendered meaningless because the only emissions to which the requirements apply will no longer occur; (2) the change is to eliminate one validated reference test method for a pollutant and source category in order to add another; (3) the requirements are redundant to or less strict than other existing requirements; (4) the requirements are technically incorrect and their elimination does not affect the accuracy of the data generated or of the monitoring information recorded or reported; or, (5) the piece of equipment to which the monitoring, record keeping, or reporting requirement applies no longer exists or has been permanently disabled from use at the stationary source.
- An amendment reflecting a change in ownership or operational control of a stationary source where the agency determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the agency;
- An amendment to incorporate into a permit the requirements from preconstruction review permits issued by the agency, incorporate into a permit the requirements from standards adopted under Code of Federal Regulations, title 40, part 63, as amended (National Emission Standards for Hazardous Air Pollutants for Source Categories), or to lower the plantwide emission limits in permits with Plantwide Applicability Limits to reflect the impact of standards adopted under Code of Federal Regulations, title 40, part 63, as amended;
- An amendment to clarify the meaning of a permit term;
- An amendment to extend a deadline in a permit by no more than 120 days, provided that the agency may only extend a deadline established by an applicable requirement described in part 7007.0100, subpart 7, items A to K, if the agency has been delegated authority to make such extensions by the administrator. Notwithstanding the previous sentence, the agency may do an administrative amendment to extend a testing deadline in a permit up to 365 days if the agency finds that the extension is needed to allow the permittee to test at worst case conditions as required by part 7017.2025, subpart 2;
- An amendment to remove any condition from a permit which was based on an applicable requirement that has been repealed, but only if the permit condition: (1) Is neither required nor replaced by another applicable requirement; and, (2) was not established for a specific facility to protect human health and the environment, to prevent pollution, as a mitigation measure in an environmental impact statement, or to obtain a negative declaration in an environmental assessment worksheet;
- An amendment to correct or update a citation to an applicable requirement where the corresponding permit condition is not changed; and,
- An amendment to include operating conditions that ensure that waste combustors emit mercury at less than 50 percent of the applicable standard.

These ''administrative amendments'' either do not substantively change the SIP or they actually strengthen the SIP (*e.g.,* require more frequent testing, reporting or recordkeeping) and are not expected to generate public interest.

4. Unit or plant permanently shut down—In this case, all SIP conditions have become obsolete because the unit or facility no longer exists and these SIP conditions no longer apply. We agree that if the unit or facility no longer exists, an automatic public hearing is not necessary to remove those SIP conditions that no longer apply.

5. Non-controversial update to an existing maintenance plan—This would be a ''technical change'' (*e.g.,* 10-year update to a maintenance plan) with no substantive compliance or inventory changes.

6. Incorporation of federal rule by reference into state rule—In these cases, the federal rules have already been through public notice and comment. Also, the state's incorporation by reference is likely to be in response to a **Federal Register** noticed delegation or a memorandum of agreement that dictates that MPCA must incorporate the rule in order to administer the federal program.

7. Rulemaking where a state public hearing has been offered but no one was interested—For some rulemakings, MPCA will hold non-mandatory meetings to discuss the merits of the rulemaking and to invite comment on draft or proposed rule language when ready. At the commencement of every rulemaking, state law requires MPCA to publish a Notice of Request for Comments (the State Register is currently published online only). This occurs before a rule has been drafted and is intended to inform potentially interested persons of the likely subject matter of the rule that the MPCA is considering. The Notice is published in the State Register (which is available only via the Internet), posted on the MPCA's website and physically mailed to all persons that have previously requested to be kept informed of such proposals. The Notice does not specify meeting dates but invites public participation generally.

During the public participation process, requests for a state public hearing (different than a SIP public hearing) can be made. If any request for a state public hearing is made, then MPCA has committed to hold a public hearing on the SIP because public interest has been expressed. However, if no requests for a state public hearing are made or if such requests are withdrawn,

then a SIP public hearing will only be held if requested.

B. Equivalent Hearing to a Public Hearing

In these instances, a public hearing that would meet the criteria in 40 CFR 51.102(d)–(f) for a SIP public hearing [see the discussion on the use of electronic notification of rulmakings and public hearing in section II.C. of this notice] has already been held as part of the procedure for some other MPCA action. Minnesota has requested that we approve this process under 40 CFR 51.102(g) as equivalent to the public hearing requirement in 40 CFR 51.102. In the past, the state has held separate SIP public hearings to satisfy the requirements of the Clean Air Act, specifically noting that the materials available for the public to comment on would be submitted for inclusion in the SIP. MPCA has noted that in the future if a state public hearing will be held, MPCA will include language in rule proposal notices that specifies which rule changes will be submitted to EPA as a SIP revision. If this is done, the state public hearing would also serve as the SIP public hearing.

C. Table Summarizing Proposed Alternative Public Hearing Processes

Below is a table summarizing the hearing procedures for SIP submittals for the state of Minnesota under this new process.

SUMMARY TABLE OF SIP TYPES

Category	Public participation on process
(1) Purely administrative—*e.g.,* correction of typographical or grammatical error	Opportunity to request hearing.
(2) De minimis change to a "secondary" compliance requirement. "Secondary" means that the requirement supports a primary requirement NAAQS related restriction such as an emission limit or fuel usage limit.	Opportunity to request hearing.
(3) Changes categorized as "administrative amendments" under MPCA's operating permit rules (see Exhibit 2; Minn. R. 7007.1400) and see 40 CFR § 70.7(d)(3)).	Opportunity to request hearing.
(4) Unit or plant permanently shut down—all SIP conditions have become obsolete (*e.g.,* Continental Nitrogen—no longer operates the boilers that were the only regulated units in its Admin Order).	Opportunity to request hearing.
(5) Addition or modification of emission unit to facility with SIP conditions with no overall increase in emissions. [Amendment of a Permit or Administrative Order that is part of SIP].	Mandatory SIP hearing.
(6) Addition or modification of emission unit to facility with SIP conditions with overall increase in emissions. [Involves amendment of a Permit or Administrative Order that is part of SIP].	Mandatory SIP hearing.
(7a) Non-controversial update to an existing maintenance plan that is a "technical change;" or 10-year update to maintenance plan with no substantive compliance or inventory changes.	Opportunity to request hearing.
(7b) Update to an existing maintenance plan that changes the compliance scheme, including 10-year update with compliance or inventory changes. Also any update that involves a known controversy.	Mandatory SIP hearing.
(8) Redesignation requests	Mandatory SIP hearing.
(9) New Plans (*e.g.,* $PM_{2.5}$, Ozone, Regional Haze)	Mandatory SIP hearing.
(10a) Rulemaking that has been the subject of a formal state public hearing. Minnesota will include language in rule proposal notices that specifies which rule changes will be submitted to EPA as a SIP revision. [Formal public hearing before an ALJ—Minn. Stat. § 14.14].	State hearing would serve as the SIP public hearing.
(10b) Rulemaking where non-mandatory stakeholder meetings are convened and the MPCA receives no requests for a formal public hearing on the proposed rule (or receives requests but all requests are withdrawn in a timely manner).	Opportunity to request hearing.
(10c) Rulemaking where non-mandatory stakeholder meetings are convened and the MPCA receives one or more requests for a formal public hearing on the proposed rule (and if requests withdrawn, not done so in time for cancellation of the public hearing).	Mandatory SIP hearing.
(10d) Rulemaking where stakeholder meetings were not held or where meetings were too informal or selective. If the rule is potentially of interest in the SIP context but for some reason the type of meeting in 11(b) was not held, a SIP-specific meeting should be held. This might occur if response to the rulemaking was minimal but the rule is part of a larger SIP plan and in that context may have special significance to a specific state action.	Mandatory SIP hearing.
(11) Incorporation of federal rule by reference into state rule	Opportunity to request hearing.

D. Use of Internet Notification of Upcoming Rulemakings and Public Hearings Versus Using Newspapers

EPA is particularly interested in your opinion on the use of electronic notification, via the internet, of rulemakings and public hearings. 40 CFR 51.102(d)–(f) describe the specific requirements states must meet in conducting public hearings for SIP submittals. However, 40 CFR 51.102(g) provides that alternative procedures may be approved provided they still ensure adequate public notification and public participation. The following provisions of 40 CFR 51.102(d) may be impacted by the use of electronic notice:

(d) Any hearing required by paragraph (a) of this section will be held only after reasonable notice, which will be considered to include, at least 30 days prior to the date of such hearing(s):

(1) Notice given to the public by prominent advertisement in the area affected announcing the date(s), time(s), and place(s) of such hearing(s);

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.

Currently, the MPCA does not use printed media to inform the general public of upcoming rulemakings or public hearings. This is different from the more common and accepted practice of states publishing notices in newspapers, or other widely available printed media, in the area affected by the rulemaking. In the past, the MPCA would use the newspaper and the State Register as a means of publishing such public notices. MPCA has discontinued using newspaper notices and, as of July 1, 2004, the Minnesota State Register is no longer printed in a hardcopy format and can only be accessed on the internet. The Minnesota State Register does offer an additional tailored subscription service but there is a $180 annual fee associated with this service. Access to the Minnesota State Register is otherwise free assuming a person already has access to the internet.

At the beginning of the rulemaking process, MPCA will publish a Notice of Request for Comments in the Minnesota State Register which is only available online. At this point in time, a rule or rule language has not yet been drafted and the Notice of Request for Comments serves to inform potentially interested parties of the likely subject matter of the rule that MPCA is considering. This notice also appears on the MPCA's website and notification is also mailed to those parties that have expressed interest in rulemakings of this type. This initial notice helps generate a more extensive list of interested parties than the MPCA may already have. In many cases the MPCA will invite these parties to meetings to discuss the merits of MPCA's rulemaking and to comment on draft or proposed rule language when ready.

In past practice, the MPCA would have published these notices in the Minnesota State Register when it was in print and the Minnesota State Register was available at any public library. Copies of draft or proposed rule language would be available at MPCA offices.

It is MPCA's current practice to then publish a Notice of Intent to Adopt online in the State Register. It is at this point the rule, as well as a detailed statement of basis, is now made available on the MPCA's Web site for public review and comment.

The argument can be made that, because our society is now highly computerized, making all of these documents available electronically is as accessible to the public, if not more so, than it was in the past when these documents were actually printed. For example, in the past if someone was interested in environmental rules he or she could go to the library to read the State Register. Now that same person can go to the same library and access the State Register online to view the same type of information once carried in the printed version of the Minnesota State Register. Since the use of home computers and access to the internet is widespread, a person can now access the Minnesota State Register from home whether they live in Minnesota or not.

We would like your comments on whether electronic notification of upcoming rulemakings and public hearings is an acceptable alternative to printed notice which ensures public notice and participation. It is important for us to hear your comments now as we will consider all of them before rendering a final decision on this matter and we will not be reproposing on this in the future.

E. Summary

In summary, we are proposing to approve under 40 CFR 51.102(g) MPCA's request to allow the above-identified types of SIP revisions to forego automatic public hearings. Instead the public would be offered the opportunity to request a public hearing on these SIP revisions. Approval of this alternative public participation process is allowed under the Code of Federal Regulations Title 40 Part 51 at 51.102(g). We believe that the requirements found in 40 CFR 51.102(g) have been met. Sections 110(a)(2) and 110(l) of the Clean Air Act require public hearings on all SIP revisions before they are submitted to the EPA. We believe that the process that MPCA has submitted for approval preserves the opportunity for the public to request the same public hearing and does not curtail the public participation process. Additionally, where MPCA provides a state public hearing that meets the requirements of 51.102(d)–(f), including effective electronic notice [see the discussion on the use of electronic notification of rulemakings and public hearing in section II. C. of this notice], and notifies the public that the rule changes will be submitted as a SIP revision, then such process is consistent with 40 CFR 51.102 and can be approved under 40 CFR 51.102(g). We are also soliciting specific comments on the use of electronic notice of MPCA rulemakings and hearings. Public comments on the use of electronic notice of hearings and rulemakings may impact the EPA's approval of the proposed alternative public hearing processes.

III. Statutory and Executive Order Reviews.

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (*58 FR 51735*, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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.*).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (*64 FR 43255*, August 10, 1999) This action merely 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.

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

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).

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

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.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use'' (*66 FR 28355*, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations.

Dated: January 19, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6–1367 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–0557b; FRL–8025–1]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) and Yolo-Solano Air Quality Management District (YSAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from polyester resin material use operations and organic liquid chemical storage and transfer operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by March 3, 2006.

ADDRESSES: Submit comments, identified by docket number [DOCKET NUMBER], 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: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses local rules VCAPCD 74.14 and YSAQMD 2.21. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 22, 2005.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 06–892 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2554

RIN 3045–AA42

Program Fraud Civil Remedies Act

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule with request for comments.

SUMMARY: The Corporation for National and Community Service (Corporation) proposes regulations to implement the Program Fraud Civil Remedies Act of 1986 (Act). The Act authorizes certain Federal agencies, including the Corporation, to impose, through administrative adjudication, civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the agency. The proposed regulations establish the procedures the Corporation will follow in implementing the provisions of the Act and specifies the hearing and appeal rights of persons subject to penalties and assessments under the Act. They also designate the Corporation's Chief Financial Officer to act on behalf of the Chief Executive Officer in carrying out certain duties and responsibilities under the regulations.

DATES: The comment period expires on April 3, 2006. Comments received after

this date will be considered to the extent practicable.

ADDRESSES: Send written comments to the Office of the General Counsel, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525. Comments may also be delivered to the Corporation for National and Community Service, Office of the General Counsel, 1201 New York Ave., NW., Room 10600, Washington, DC 20525 between 9 a.m. and 4:15 p.m. Federal workdays. Copies of any comments received may be examined and copied for a fee upon request to Irshad Abdal-Haqq, Office of the General Counsel, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525; Telephone 202–606–6675. You also may send comments by facsimile transmission to (202) 606–3467, or send them electronically to *programfraudrule@cns.gov* or through the Federal Government's one-stop rulemaking Web site at *http://www.regulations.gov.* Members of the public may review copies of all comments received on this rulemaking at the above address between 9 a.m. and 4:15 p.m. during Federal workdays.

FOR FURTHER INFORMATION CONTACT: Irshad Abdal-Haqq, Office of the General Counsel, Corporation for National and Community Service, 1201 New York Ave., NW., Room 10600, Washington, DC 20525, Telephone: 202–606–6675. [Persons with visual impairments may request this proposed rule in an alternative format. The TDD/TTY number is 202–606–3472.]

SUPPLEMENTARY INFORMATION:

Background

In October 1986, Congress enacted the Program Fraud Civil Remedies Act, Public Law 99–509 (codified at 31 U.S.C. 3801–3812), to establish an administrative remedy against any person who makes a false claim or written statement to any of certain Federal agencies. In brief, it requires the affected Federal agencies to follow certain procedures in recovering penalties (up to $5,000 per claim) and assessments (up to double the amount falsely claimed) against persons who file false claims or statements for which the liability is $150,000 or less. When the Act was enacted, the Corporation for National and Community Service did not exist, and the Act did not apply to the Corporation's predecessor agency, ACTION. However, that Act has since become applicable to the Corporation as a result of amendments to the Inspector General Act, Public Law 103–82, September 21, 1993. Those amendments, inter alia, added the Corporation for National and Community Service as an ''establishment'' under the Inspector General Act and, by doing so, operated to bring the Corporation within the provisions of the Program Fraud Civil Remedies Act.

The Act requires each affected agency to promulgate rules and regulations necessary to implement its provisions. Following the Act's enactment, at the request of the President's Council on Integrity and Efficiency (PCIE) an interagency task force was established under the leadership of the Department of Health and Human Services to develop model regulations for implementation of the Act by all affected agencies. This action was in keeping with the stated desire of the Senate Governmental Affairs Committee that ''the regulations would be substantially uniform throughout the government'' (S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). Upon their completion, the PCIE recommended adoption of the model rules by all affected agencies.

It is the policy of the Corporation to use a plain language style when proposing regulations, and we have done so in this document without making substantive changes to the PCIE model regulations. For the sake of consistency, we relied, to the extent practicable, on plain language regulations issued by the Small Business Administration in 1996. See 61 FR 2691, January 29, 1996

A more detailed discussion of the PCIE's model regulations is found in the promulgations of several of the agencies that adopted them earlier, including those of the Departments of Justice (53 FR 4034; February 11, 1988 and 53 FR 11645; April 8, 1988); Health and Human Services (52 FR 27423; July 21, 1987 and 53 FR 11656, April 8, 1988); and Transportation (52 FR 36968; October 2, 1987 and 53 FR 880, January 14, 1988). Anyone desiring further explanation of the model rules is referred to the cited references. The proposed regulations incorporate, where appropriate, definitions to fit the Corporation's organization. They prescribe the procedure under which false claims and statements subject to the Act will be investigated and reviewed, and the rules under which any ensuing hearing will be conducted.

Statutory and Regulatory Analysis

Under the Act, false claims and statements subject to its provisions are to be investigated by an agency's investigating official. The results of the investigation are then reviewed by an agency reviewing official who determines whether there is adequate evidence to believe that the person named in the report is liable under the Act. Upon an affirmative finding of adequate evidence, the reviewing official sends to the Attorney General a written notice of the official's intent to refer the matter to a presiding officer for an administrative hearing. The agency institutes administrative proceedings against the person only if the Attorney General or the Attorney General's designee approves. Any penalty or assessment imposed under the Act may be collected by the Attorney General through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal government.

The proposed regulations designate the Inspector General or his or her designee as the agency's investigating official. They also designate the General Counsel as the reviewing official. Any administrative adjudication under the Act will be presided over by an Administrative Law Judge and any appeals from the Administrative Law Judge's decision will be decided by the Corporation's Chief Executive Officer or Chief Financial Officer. The proposed regulations designate the Corporation's Chief Financial Officer to act on behalf of the Chief Executive Officer in carrying out the duties and responsibilities of the ''authority head'' under the regulations.

Paperwork Reduction Act

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12866

The Corporation has determined that the proposed rule is not an ''economically significant'' rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in E.O. 12866. However, it is a significant regulation and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Corporation certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The proposed rule establishes the procedural mechanism for investigating and adjudicating allegations of false claims or statements made against affected agencies. The proposed rule, by itself, does not impose any obligations on entities including any entities that may fall within the definition of ''small entities'' as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of ''small business'' as found in Section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards found in 13 CFR part 121. These obligations would not be created until an order is issued, at which time the person subject to the order would have a right to a hearing in accordance with the regulations. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects in 45 CFR Part 2554

Claims, Fraud, Organization and function (government agencies), Penalties.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to add a new Part 2554 to Chapter XXV of Title 45 of the Code of Federal Regulation to read as follows:

PART 2554—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

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Authority: Pub. L. 99–509, Secs. 6101–6104, 100 Stat. 1874 (31 U.S.C. 3801–3812); 42 U.S.C. 12651c–12651d.

Overview and Definitions

§ 2554.1 Overview of regulations.

(a) Statutory basis. This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (''the Act''). The Act provides the Corporation and other Federal agencies with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this part.

(b) Possible remedies for program fraud. In addition to any other penalties that may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to the Corporation is subject to a civil penalty of not more than $5,000 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by the Corporation. If the Corporation has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it also is subject to an assessment of not more than twice the

amount of the false claim. This assessment is in lieu of damages sustained by the Corporation because of the false claim.

§ 2554.2 What kind of conduct will result in program fraud enforcement?

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to the Corporation is subject to program fraud enforcement. A ''person'' means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced the Corporation to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several, that is, each is responsible for the entire amount.

(c) No proof of specific intent to defraud is required to establish liability under this part.

§ 2554.3 What is a claim?

(a) Claim means any request, demand, or submission:

(1) Made to the Corporation for property, services, or money;

(2) Made to a recipient of property, services, or money from the Corporation or to a party to a contract with the Corporation for property or services, or for the payment of money. This provision applies only when the claim is related to property, services or money from the Corporation or to a contract with the Corporation; or

(3) Made to the Corporation which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes the Corporation guaranteed loans made by participating lenders. A claim is made when it is received by the Corporation, an agent, fiscal intermediary, or other entity acting for the Corporation, or when it is received by the recipient of property, services, or money, or the party to a contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 2554.4 What is a statement?

A ''statement'' means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from the Corporation. ''From the Corporation'' means that the Corporation provides some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or is potentially liable to another party for some portion of the money or property under such contract, bid, grant, loan, or benefit. A statement is made, presented, or submitted to the Corporation when it is received by the Corporation or an agent, fiscal intermediary, or other entity acting for the Corporation.

§ 2554.5 What is a false claim or statement?

(a) A claim submitted to the Corporation is a ''false'' claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim:

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to the Corporation is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement:

(1) Asserts a material fact which is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

§ 2554.6 What does the phrase ''know or have reason to know'' mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Procedures Leading to Issuance of a Complaint

§ 2554.7 Who investigates program fraud?

The Inspector General, or his designee, is the investigating official responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents.

§ 2554.8 What happens if program fraud is suspected?

(a) If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his or her designee. If the reviewing official determines that the report provides adequate evidence that a person submitted a false claim or statement, the reviewing official transmits to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official's statements concerning:

(1) The reasons for the referral;

(2) The claims or statements upon which liability would be based;

(3) The evidence that supports liability;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(b) If at any time, the Attorney General or his or her designee requests in writing that this administrative process be stayed, the authority head, as identified in § 2554.9 of this Part, must stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 2554.9 Who is the Corporation's authority head?

The Corporation's ''authority head'' is the Chief Executive Officer or his or her

designee. For purposes of this Part, the Corporation's Chief Financial Officer is designated to act on behalf of the Chief Executive Officer.

§ 2554.10 When will the Corporation issue a complaint?

The Corporation will issue a complaint:

(a) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and

(b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed $150,000. ''A group of related claims submitted at the same time'' includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

§ 2554.11 What is contained in a complaint?

(a) A complaint is a written statement giving notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and of the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to the Corporation is referred to as the ''defendant.''

(b) The reviewing official may join in a single complaint, false claims or statements that are unrelated, or that were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that the Corporation seeks to impose civil penalties, assessments, or both, against each defendant and will include:

(1) The allegations of liability against each defendant, including the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which each defendant may be held liable;

(3) A statement that each defendant may request a hearing by filing an answer and may be represented by a representative;

(4) Instructions for filing such an answer;

(5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.

(d) The reviewing official must serve any complaint on the defendant and, if a hearing is requested by the defendant, provide a copy to the Administrative Law Judge (ALJ) assigned to the case.

§ 2554.12 How will the complaint be served?

(a) The complaint must be served on individual defendants directly, a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director, except that service also may be made on any person authorized by appointment or by law to receive process for the defendant.

(b) The complaint may be served either by:

(1) Registered or certified mail (return receipt requested) addressed to the defendant at his or her residence, usual dwelling place, principal office or place of business; or by

(2) Personal delivery by anyone 18 years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(d) Proof of service—

(1) When service is made by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is made by personal delivery, an affidavit of the individual serving the complaint, or written acknowledgment of receipt by the defendant or a representative, will serve as proof of service.

(e) When served with the complaint, the defendant also should be served with a copy of this Part 2554 and 31 U.S.C. 3801–3812.

Procedures Following Service of a Complaint

§ 2554.13 How does a defendant respond to the complaint?

(a) A defendant may file an answer with the reviewing official within 30 days of service of the complaint. An answer will be considered a request for an oral hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why he or she believes the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant initially files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with the ALJ and a copy must be served on the reviewing official.

§ 2554.14 What happens if a defendant fails to file an answer?

(a) If a defendant does not file any answer within 30 days after service of the complaint, the reviewing official will refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the defendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) If, at any time before an initial decision becomes final, a defendant files a motion with the ALJ asking that the case be reopened and describing the extraordinary circumstances that prevented the defendant from filing an answer, the initial decision will be stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If, in his motion to reopen, a defendant demonstrates extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision, and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to review or reconsideration.

(i) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(j) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(k) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(l) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(m) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 2554.15 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he must file concurrently, the complaint and the answer with the ALJ, along with a designation of a Corporation representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of oral hearing upon the defendant and the representative for the Corporation, in the same manner as the complaint, service of which is described in § 2554.12. The notice of oral hearing must be served within six years of the date on which the claim or statement is made.

(c) The notice must include:

(1) The tentative time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for the Corporation; and

(6) Such other matters as the ALJ deems appropriate.

(d) The six year statute of limitation may be extended by agreement of the parties.

Hearing Provisions

§ 2554.16 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

§ 2554.17 At the hearing, what rights do the parties have?

(a) The parties to the hearing shall be the defendant and the Corporation. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 2554.18 What is the role of the ALJ?

An ALJ retained by the Corporation serves as the presiding officer at all hearings.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 2554.19 Can the reviewing official or ALJ be disqualified?

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:

(1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;

(2) The motion must be filed promptly after discovery of the grounds for disqualification, or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that the motion is made in good faith.

(c) Once a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

§ 2554.20 How are issues brought to the attention of the ALJ?

(a) All applications to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 2554.21 How are papers served?

(a) Form. (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) Service. A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 2554.12 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) Proof of service. A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 2554.22 How is time computed?

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 2554.23 What happens during a prehearing conference?

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearances at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 2554.24 What rights are there to review documents?

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 2554.8 are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 2554.8 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 2554.13.

§ 2554.25 What type of discovery is authorized and how is it conducted?

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 2554.27 and 2554.28, the term ''documents'' includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery. (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 2554.30.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 2554.30.

(e) Depositions. (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 2554.12.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 2554.26 Are there limits on disclosure of documents or discovery?

(a) Upon written request to the reviewing official, the defendant may review all non-privileged, relevant and material documents, records and other material related to the allegations contained in the complaint. After paying the Corporation a reasonable fee for duplication, the defendant may obtain a copy of the records described.

(b) Upon written request to the reviewing official, the defendant may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. If the document would otherwise be privileged, only the portion of the document containing exculpatory information must be disclosed. As used in this section, the term ''information'' does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(d) Other discovery is available only as ordered by the ALJ and includes only those methods of discovery allowed by § 2554.25.

§ 2554.27 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

§ 2554.28 Can witnesses be subpoenaed?

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 2554.12. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 2554.29 Who pays the costs for a subpoena?

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 2554.30 Are protective orders available?

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 2554.31 Where is the hearing held?

The ALJ will hold the hearing in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made, presented or submitted to the Corporation; or

(c) As agreed upon by the defendant and the ALJ.

§ 2554.32 How will the hearing be conducted and who has the burden of proof?

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty and/or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for a decision by the ALJ.

(b) The Corporation must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 2554.33 How is evidence presented at the hearing?

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

§ 2554.34 How is witness testimony presented?

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 2554.27(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 2554.35 Will the hearing proceedings be recorded?

The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication. The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head. The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 2554.30.

§ 2554.36 Can a party informally discuss the case with the ALJ?

No. Such discussions are forbidden as ''ex parte communications'' with the ALJ. No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 2554.37 Are there sanctions for misconduct?

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 2554.38 Are post-hearing briefs required?

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

Decisions and Appeals

§ 2554.39 How is the case decided?

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact,

conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ will serve the initial decision on all parties within 90 days after close of the hearing or expiration of any allowed time for submission of post-hearing briefs. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay and set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head.

§ 2554.40 How are penalty and assessment amounts determined?

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence that ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 2554.41 Can a party request reconsideration of the initial decision?

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must be accompanied by a supporting brief and must describe specifically each allegedly erroneous decision.

(c) Any response to a motion for reconsideration will only be allowed if it is requested by the ALJ.

(d) The ALJ will dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, that party may not file another motion for reconsideration.

§ 2554.42 When does the initial decision of the ALJ become final?

(a) The initial decision of the ALJ becomes the final decision of the Corporation, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false claim or statement timely appeals to the Corporation's authority head, as set forth in § 2554.43.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of the Corporation 30 days after the order is issued, unless a defendant adjudged to have submitted a false claim or statement timely appeals to the authority head, within 30 days of the ALJ's order, as set forth in § 2554.43.

§ 2554.43 What are the procedures for appealing the ALJ decision?

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the authority head within 30 days following issuance of the initial decision, serving a copy of the notice of appeal on all parties and the ALJ. The authority head may extend this deadline for up to an additional 30 days if an extension request is filed within the initial 30 day period and shows good cause.

(c) The defendant's appeal will not be considered until all timely motions for reconsideration have been resolved.

(d) If a timely motion for reconsideration is denied, a notice of appeal may be filed within 30 days following such denial or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying why the initial decision should be reversed or modified.

(f) The Corporation's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's notice of appeal and supporting brief.

(g) If a defendant timely files a notice of appeal, and the time for filing motions for reconsideration has expired,

the ALJ will forward the record of the proceeding to the authority head.

§ 2554.44 What happens if an initial decision is appealed?

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 2554.45 Are there any limitations on the right to appeal to the authority head?

(a) A defendant has no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing defendant demonstrates to the satisfaction of the authority head that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for consideration of the additional evidence.

§ 2554.46 How does the authority head dispose of an appeal?

(a) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The authority head will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 2554.47 What judicial review is available?

31 U.S.C. 3805 authorizes judicial review by the appropriate United States District Court of any final Corporation decision imposing penalties or assessments, and specifies the procedures for such review. To obtain judicial review, a defendant must file a petition with the appropriate court in a timely manner.

§ 2554.48 Can the administrative complaint be settled voluntarily?

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case from the date of the ALJ's initial decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head or the Attorney General, as appropriate.

§ 2554.49 How are civil penalties and assessments collected?

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions.

§ 2554.50 What happens to collections?

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 2554.51 What if the investigation indicates criminal misconduct?

(a) Any investigating official may:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this part limits the requirement that the Corporation employees report suspected violations of criminal law to the Corporation's Office of Inspector General or to the Attorney General.

§ 2554.52 How does the Corporation protect the rights of defendants?

These procedures separate the functions of the investigating official, reviewing official, and the ALJ, each of whom report to a separate organizational authority in accordance with 31 U.S.C. 3801. Except for purposes of settlement, or as a witness or a representative in public proceedings, no investigating official, reviewing official, or Corporation employee or agent who helps investigate, prepare, or present a case may (in such case, or a factually related case) participate in the initial decision or the review of the initial decision by the authority head. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for the Corporation may be employed in the offices of either the investigating official or the reviewing official.

Dated: January 26, 2006.

David Eisner,

Chief Executive Officer.

[FR Doc. E6–1220 Filed 1–31–06; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 05–196]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Access to Emergency Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether it should adopt rules requiring Video Relay Service (VRS) and Internet-Protocol (IP) Relay providers to adopt a means to ensure that, when the provider receives emergency calls made via these services, the provider can make an outbound call to the appropriate Public Safety Answering Point (PSAP). More specifically, the Commission seeks comment on whether it should adopt a registration process whereby VRS and IP Relay service providers are required to establish, in advance, the primary location from which the VRS and IP Relay service providers will be making calls, so the provider can identify the appropriate PSAP to contact.

DATES: Comments are due on or before February 22, 2006. Reply comments are due on or before March 8, 2006. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before April 3, 2006.

ADDRESSES: You may submit comments, identified by [CG Docket number 03–123 and/or FCC Number 05–196], by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, a copy of any comments on the PRA information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kristy_L._LaLonde@omb.eop.gov*, or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking (*NPRM*), *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Access to Emergency Services*; CG Docket No. 03–123, FCC 05–196, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. This is a summary of the Commission's *NPRM*, FCC 05–196, adopted November 18, 2005, and released November 30, 2005, in CG Docket No. 03–123.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 03–123. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a ''permit-but-disclose'' proceeding in which *ex parte* communications are subject to disclosure. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comment are due April 3, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,

Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Access to Emergency Services.

Form No.: N/A.

Type of Review: New collection.

Number of Respondents: 8—(6 of which provides VRS and IP Relay service; 2 of which provides VRS).

Number of Responses: 5,001,022.

Respondents: Business and other for-profit entities; State, Local or Tribal Government.

Estimated Time per Response: 4 to 1,000 hours.

Frequency of Response: Annual and on occasion reporting requirement; Recordkeeping; Third party disclosure.

Total Annual Burden: 21,504 hours.

Total Annual Costs: $0.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On November 30, 2005, the Commission released a Notice of Proposed Rulemaking (*NPRM*), CG Docket No. 03–123, which addresses the issue of access to emergency services for Internet-based forms of Telecommunications Relay Services (TRS), namely Video Relay Service (VRS) and Internet-Protocol (IP) Relay Service. The Commission seeks to adopt a means to ensure that such calls promptly reach the appropriate emergency service provider. By doing so, the *NPRM* seeks comment on various issues: (1) Whether the Commission should require VRS and IP Relay service providers to establish a registration process in which VRS and IP Relay service users provide, in advance, the primary location from which they will be making VRS or IP Relay service calls (the Registered Location), so that a communication assistant (CA) can identify the appropriate Public Safety Answering Point (PSAP) to contact; (2) Should VRS and IP Relay providers be required to register their customers and obtain a Registered Location from their customers so that they will be able to make the outbound call to the appropriate PSAP; (3) whether there are other means by which VRS and IP Relay service providers may obtain Registered Location information, for example, by linking the serial number of the customer VRS or IP Relay service terminal or equipment to their registered location; (4) any privacy considerations that might be raised by requiring VRS and IP Relay service users to provide location information as a prerequisite to using these services; (5) whether, assuming some type of location registration requirement is adopted, the Commission should require specific information or place limits on the scope of information that providers should be able to obtain; (6) whether the Commission should require VRS and IP Relay providers to provide appropriate warning labels for installation on customer premises equipment (CPE) used in connection with VRS and IP Relay services; (7) whether the Commission should require VRS and IP Relay providers to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood the advisory that E911 service may not be available through VRS and IP Relay or may be in some way limited by comparison to traditional E911 service; and (8) how the Commission may ensure that providers have updated location information, and the respective obligations of the providers and the consumers in this regard.

Synopsis

In the *NPRM*, the Commission addresses the issue of access to emergency services for VRS and IP Relay services. TRS, created by Title IV of the Americans with Disabilities Act of 1990 (ADA), enables an individual with a hearing or speech disability to communicate by telephone or other device through the telephone system with a person without such a disability. *See* 47 U.S.C. 225(a)(3) (defining TRS); 47 CFR 64.601(14). As the Commission has often recognized, 911 service is critical to our nation's ability to respond to a host of crises. *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94–102, RM–8143, FCC 96–264, First Report and Order, 11 FCC Rcd 18676, 18679, paragraph 5 (July 26, 1996); published at 61 FR 40348 (August 2, 1996), (*E911 First Report and Order*); *IP-Enabled Service, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04–36, 05–196, FCC 05–116, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, at 10247–10248, paragraph 4 (June 3, 2005) (*VoIP E911 Order*); published at 70 FR 43323 (July 27, 2005). In the four decades since 911 service was established, Americans largely take for granted, that in the event of an emergency, they can use the telephone to quickly reach the proper authorities and that the first responders will be able to accurately locate them. *See VoIP E911 Order*, 20 FCC Rcd at 10248–10249, paragraph 6. Because wireline telephones are generally linked to a particular address, emergency calls placed over the traditional Public Switched Telephone Network (PSTN), including direct TTY calls, can usually be routed to the proper PSAP where location information is automatically displayed. When a user dials 911 with a TTY to contact a PSAP, it is not a TRS call and therefore a relay provider is not involved. Such a call is automatically routed to the appropriate PSAP in the same manner as any other 911 PSTN call, and contains the same location and callback information as a voice call to 911. Under Title II of the ADA, PSAPs must be capable of directly receiving TTY calls. *See* 28 CFR 35.162 (United States Department of Justice regulations implementing Title II of the ADA and requiring telephone emergency services, including 911 services, to provide ''direct access to individuals who use [TTY's]''). This is the most reliable way for persons with hearing or speech disabilities to reach emergency services. *VoIP E911 Order*, 20 FCC Rcd at 10250–10254, paragraphs 12–18. Such direct, automatic access to emergency services through VRS and IP Relay services, however, does not currently exist and, accordingly, solutions must be developed.

Emergency calls made via TRS, rather than by directly calling 911, present unique challenges, because they are connected through a communications assistant (CA), rather than routed directly and automatically to the appropriate PSAP over a network, and the CA must make an outbound voice telephone call to the appropriate PSAP. The CA, therefore, must have a means of determining both (1) where the relay caller is physically located, and (2) the appropriate PSAP that corresponds to that geographic location so the CA can make the outbound telephone call to the PSAP. Because Internet-based calls do not originate on the PSTN, location and callback information is not transmitting and CAs must use other methods to ascertain the callers' location. The Commission accordingly seeks comment on ways in which we may ensure that the CA will be able to call the appropriate PSAP when a VRS or IP Relay service user calls the relay provider and asks the CA to call emergency services. The Commission also seeks comment on whether, and if so, how, requirements ensuring that persons using VRS and IP Relay service will have access to emergency services might affect the TRS funding

mechanism. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12482–12483, paragraphs 7–8 (June 30, 2004) (*2004 TRS Report and Order*); published at 69 FR 53346 (September 1, 2004) and 69 FR 53382 (September 1, 2004) (overview of TRS funding mechanism).

Background

Telecommunications Relay Service

Title IV of the Americans with Disabilities Act of 1990 (ADA), adding Section 225 to the Communications Act of 1934, requires the Commission to ensure that TRS is available, to the extent possible and in the most efficient manner, to persons with hearing or speech disabilities in the United States. 47 U.S.C. 225(b)(1). The statute requires that TRS offer persons with hearing and speech disabilities telephone transmission services that are ''functionally equivalent'' to voice telephone services. 47 U.S.C. 225(a)(3).

Initially, TRS was provided via a TTY (text telephone) and the PSTN. In such a ''traditional'' TRS call, a person with a hearing or speech disability initiates the call by dialing (*i.e.*, typing) a telephone number for a TRS facility using a TTY, and then types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the ''link'' in the conversation, converting all typed TTY messages from the caller into voice messages for the called party, and all voice messages from the called party into typed messages for the TTY user. *See generally 2004 TRS Report and Order*, 19 FCC Rcd at 12480, paragraph 3, note 18.

In March 2000, the Commission recognized VRS as a form of TRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152–5154, paragraphs 21–27 (March 6, 2000); published at 65 FR 38432 (June 21, 2000) and 65 FR 38490 (June 21, 2000) (Improved TRS Order and FNPRM) (recognizing VRS as a form of TRS); 47 CFR 64.601(17) (defining VRS). VRS requires the use of a broadband Internet connection between the VRS user and the CA, which allows them to communicate in sign language via a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in American Sign Language (ASL) with the deaf person and by voice with the hearing person. Presently, all VRS and IP Relay service calls are compensated from the Interstate TRS Fund. The question of whether the Commission should adopt a mechanism for the jurisdictional separation of costs for these services is pending before the Commission. *2004 TRS Report and Order*, 19 FCC Rcd at 12561–12564, paragraphs 221–230 (IP Relay), at 12567, paragraphs 241–242 (VRS). Although the Commission has not made VRS a mandatory service, it has encouraged its development. In the past few years use of VRS has grown tremendously. In January 2002, the first month VRS was generally offered, there were 7,215 minutes of use; in January 2003, there were 128,114 minutes of use; in January 2004, there were 477,538 minutes of use; and in January 2005, there were 1,634,316 minutes of use. There were over 2.2 million minutes of use of VRS in July 2005.

In April 2002, the Commission recognized a second Internet-based form of TRS—IP Relay service. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (April 22, 2002); published at 67 FR 39863 (June 11, 2002) and 67 FR 39929 (June 11, 2002) (*IP Relay Declaratory Ruling and FNPRM*). IP Relay service calls are text-based calls, but the user connects to the TRS facility via a computer (or other similar device) and the Internet, rather than via a TTY and the PSTN. A user establishes a local connection to an Internet service provider using a computer, web phone, personal digital assistant, or other IP-enabled device, selects the Internet address of an IP Relay service provider, and is connected to a CA who handles the call in the same way that TTY-based calls are handled. *See generally Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order on Reconsideration, 18 FCC Rcd 4761, at 4762, paragraph 3, note 11 (March 14, 2003). IP Relay service, like VRS, has become very popular, because the user can make a relay call with any computer (or similar device) connected to the Internet, rather than only with a dedicated TTY.

911/E911 Service

Basic 911 service is a forwarding arrangement in which 911 calls are transmitted, based on the caller's location, to a geographically appropriate PSAP. *See VoIP E911 Order*, 20 FCC Rcd at 10250–10251, paragraph 12. These calls are therefore routed based on the calling party's number, not the called number. *See VoIP E911 Order*, 20 FCC Rcd at 10251, paragraph 13, note 32. The service does not provide the PSAP, however, with the caller's location information. E911 systems do provide the call taker with the caller's call back number, referred to as Automatic Numbering Information (ANI), and, in many cases, the caller's location information, a capability referred to as Automatic Location Identification (ALI). *VoIP E911 Order*, 20 FCC Rcd at 10251, paragraph 13. Virtually all wireline local exchange carriers (LECs) and Commercial Mobile Radio Services (CMRS) carriers now provide at least basic 911 service, and in many localities E911 service. *VoIP E911 Order*, 20 FCC Rcd at 10249–10251, paragraphs 8, 13.

New communications technologies have posed technical and operational challenges to the 911 system. *VoIP E911 Order*, 20 FCC Rcd at 10249, paragraph 8. For example, the mobility of wireless telephones renders the use of permanent street addresses as a location indicator useless. The person using the telephone could be anywhere in the country, notwithstanding that the wireless telephone number is associated with a particular physical address. Under the Commission's rules, wireless telephone service providers must employ a means of providing real-time location updates to the PSAP. *VoIP E911 Order*, 20 FCC Rcd at 10252–10253, paragraph 17. Thus, wireless carriers have developed various techniques to provide ANI and ALI to the PSAPs that involve enhancements to the existing wireless E911 network. *See generally VoIP E911 Order*, 20 FCC Rcd at 10252–10254, paragraphs 16–18 (addressing wireless E911 technical and operational issues).

TRS and Emergency Call Handling

In 1991, the Commission, pursuant to Congress's direction in Section 225 of the Communications Act, adopted the TRS regulations. *See Telecommunication Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, FCC 91–213, Report and Order and Request for Comments, 6 FCC Rcd

4657 (July 26, 1991); published at 56 FR 36729 (August 1, 1991) (*TRS I*). These regulations include mandatory minimum standards that govern the provision of TRS. *See* 47 CFR 64.604. The purpose of these standards is to ensure that TRS users have the ability to access the telephone system in a manner that approximates, as closely as possible, the experience of a voice telephone user consistent with the functional equivalency mandate. One of the mandatory minimum standards requires TRS CAs to handle emergency calls. *See* 47 CFR 64.604(a)(4); *see also, TRS I*, 6 FCC Rcd at 4659, paragraph 10. The Commission requires CAs to handle emergency calls like any other TRS calls. *See* 47 CFR 64.604(a)(4); *see also, TRS I*, 6 FCC Rcd at 4659, paragraph 10. At the same time, the Commission has ''strongly encourage[d] * * * TRS users to access emergency 911 services directly.'' *See* 47 CFR 64.604(a)(4) of the Commission's rules; *see also, TRS I*, 6 FCC Rcd at 4659, paragraph 10. In other words, the Commission recognized that although TRS users should call 911 on their TTY in the event of an emergency, so that they would be directly connected to a PSAP, TRS providers also were required to handle emergency calls if a person chose to make an emergency call through the TRS center. The final rule provided: ''CAs shall handle emergency calls in the same manner as they handle any other TRS calls.'' 47 CFR 64.604(a)(3) (1993).

In 1998, the Commission proposed amendments to the TRS mandatory minimum standards and sought comment on various issues to enhance the quality of TRS and broaden the potential universe of TRS users. *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, FCC 98–90, Notice of Proposed Rulemaking, 13 FCC Rcd 14187 (May 20, 1998) (*1998 TRS NPRM*). One of the issues the Commission addressed was access to emergency services. *1998 TRS NPRM*, 13 FCC Rcd at 14203, paragraphs 40–41. The Commission noted that despite regulations requiring state and local governments to make emergency services directly accessible to TTY users (for direct TTY to TTY calls), many individuals with hearing and speech disabilities use TRS to contact emergency services. *1998 TRS NPRM*, 13 FCC Rcd at 14203, paragraph 41. The Commission also expressed concern that there was ''inconsistency and confusion among the states and TRS providers as to how such calls should be handled.'' *1998 TRS NPRM*, 13 FCC Rcd at 14203, paragraph 40. Accordingly, the Commission sought comment on how TRS providers were handling emergency calls and, more specifically, whether TRS providers should be required to pass a caller's ANI to an emergency services operator. *1998 TRS NPRM*, 13 FCC Rcd at 14203, para. 41.

In the *Improved TRS Order*, the Commission recognized that because some persons continue to make emergency calls via TRS (rather than directly TTY to TTY), it had an ''obligation to make relay calls to 911 functionally equivalent to a direct call to 911.'' *Improved TRS Order and FNPRM*, 15 FCC Rcd at 5182–5183, paragraphs 99–100. The Commission modified the TRS emergency call handling rule in two respects. First, the Commission required providers to be able to match the incoming caller's telephone number with the appropriate PSAP electronically, so that the CA can quickly make the outbound call to the PSAP. *Improved TRS Order and FNPRM*, 15 FCC Rcd at 5182–5184, paragraphs 99–102. Second, the Commission required CAs to pass along the caller's telephone number to the PSAP orally when the caller disconnects before being connected to emergency services. *Improved TRS Order and FNPRM*, 15 FCC Rcd at 5183–5184, paragraph 101. As a result of these additional requirements, TRS service providers found it necessary to develop new databases of all PSAPs in the country. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 16 FCC Rcd 4662, 4666, paragraph 12 (February 23, 2001) (*TRS 911 Waiver Order*).

In June 2003, the Commission again addressed TRS access to emergency services. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, CG Docket No. 03–123, FCC 03–112, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12379, at 12407, paragraph 42 (June 17, 2003); published at 68 FR 50973 (August 25, 2003) and 68 FR 50993 (August 25, 2004) (*TRS Second Improved Report and Order*). The Commission clarified that TRS providers must route emergency TRS calls to the ''appropriate'' PSAP and required TRS providers to adjust their databases accordingly. *TRS Second Improved Report and Order* 18 FCC Rcd at 12406–12408, paragraphs 40–42. Because of jurisdictional boundaries, the ''appropriate'' PSAP is not always the geographically closest PSAP to the calling party. The Commission also addressed handling of wireless emergency TRS calls, noting the difficulty in tracing the location of the wireless caller, and sought comment on how to make such calls functionally equivalent to wireless voice calls. *TRS Second Improved Report and Order* 18 FCC Rcd at 12408, paragraphs 43–46, and 12433–12434, paragraphs 108–109. In a subsequent order, the Commission further clarified that the ''appropriate'' PSAP is ''either a PSAP that the caller would have reached if he had dialed 911 directly, or a PSAP that is capable of enabling the dispatch of emergency services to the caller in an expeditious manner.'' *2004 TRS Report and Order*, 19 FCC Rcd at 12559, paragraph 216. The Commission also revisited the issue of routing wireless emergency TRS calls. The Commission determined that implementation of rules in this context would be premature and that it would reconsider the issue at a later time once other E911 requirements had been implemented. *2004 TRS Report and Order*, 19 FCC Rcd at 12501–12502, paragraphs 52–54.

Waiver of Emergency Call Handling for VRS and IP Relay

As noted above, in March 2000 the Commission recognized VRS as a form of TRS. In December 2001, the Commission granted a two-year waiver of emergency call handling requirements for VRS providers. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 17 FCC Rcd 157, at 161–162, paragraphs 11–14 (December 31, 2001) (*VRS Waiver Order*). The Commission recognized that VRS providers needed additional time to establish PSAP databases, and to adjust new and developing VRS technologies to effectively handle emergency calls made via VRS. *VRS Waiver Order*, 17 FCC Rcd at 162, paragraph 13. At the same time, VRS providers were required to clearly explain in their promotional materials and on their Web sites the shortcomings of using VRS to place an emergency call. *VRS Waiver Order*, 17 FCC Rcd at 162, paragraph 14. Subsequently, the Commission has twice extended this waiver, which presently expires on January 1, 2006. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, DA 03–4029, Order, 18 FCC Rcd 26309 (December 19, 2003) (extending waiver until June 30, 2004); *2004 TRS Report*

and Order, 19 FCC Rcd at 12520–12521, paragraphs 111–112 (extending waiver until January 1, 2006). Most recently, the Commission emphasized that because VRS users gain access to VRS via the Internet, rather than a telephone, VRS providers do not receive the automatic number identification (ANI) of the calling party. As a result, VRS providers cannot identify the caller's location to relay that information to the PSAP. *2004 TRS Report and Order*, 19 FCC Rcd at 12522, paragraph 117.

The initial order recognizing IP Relay service as a form of TRS also waived the emergency call handling requirement. *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7789, paragraph 30. The Commission noted that IP Relay service providers do not receive the ANI of the calling party (because the call is via the Internet), and therefore do not have that information to pass on to a PSAP. *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7789, paragraph 30. The Commission encouraged providers to work on developing a method to rapidly obtain location information from emergency callers and pass that information on to the appropriate PSAP emergency response center. *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7789, paragraph 30. In March 2003, the Commission extended this waiver until January 1, 2008, again noting that the technology was not currently available to accurately relay emergency IP Relay service calls to emergency service providers, and to automatically provide the emergency services providers with location information. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, FCC 03–46, Order on Reconsideration, 18 FCC Rcd. 4761, at 4766, paragraph 12, and 4770–4771, paragraph 28 (March 14, 2003); published at 68 FR 18826 (April 16, 2003) (*IP Relay Reconsideration Order*).

The VoIP E911 Order

On June 3, 2005, the Commission required interconnected VoIP providers, by November 28, 2005, to ''transmit all 911 calls, as well as a call back number and the caller's 'Registered Location' for each call, to the PSAP, designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location.'' *VoIP E911 Order*, 20 FCC Rcd at 10266, paragraph 37; *see also OMB Grants Emergency Approval of New VoIP E911 Rules Adopted in IP-Enabled Services First Report and Order; Effective Date is July 29, 2005*, WC Docket No. 04–36, Public Notice (July 12, 2005). The Commission also required that all E911 calls be routed through the existing ''Wireline E911 Network,'' and not to 10-digit NPA-NXX numbers (administrative numbers), and that location or call back information be provided only to the extent that the PSAP, designated statewide default answering point, or appropriate local emergency authority designated to serve a Registered Location is capable of receiving and utilizing the data (such as ALI or ANI). *See VoIP E911 Order*, 20 FCC Rcd at 10269–10270, paragraph 42 and note 142. Even in those areas where the PSAP is not capable of receiving or processing location or call back information, the Commission concluded that interconnected VoIP providers must transmit all 911 calls to the appropriate PSAP via the Wireline E911 Network. *See VoIP E911 Order*, 20 FCC Rcd at 10269–10270, paragraph 42. The ''Wireline E911 Network'' is defined as a ''dedicated wireline network that (1) is interconnected with but largely separate from the public switched telephone network, (2) includes a selective router, and (3) is utilized to route emergency calls and related information to PSAPS, designated statewide default answering points, appropriate local emergency authorities or other emergency answering points.'' 47 CFR 9.3. Recognizing that ''it currently is not always technologically feasible for providers of interconnected VoIP services to automatically determine the location of their end users without end users' active cooperation,'' *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46, the Commission stated that interconnected VoIP providers must obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46. The Commission ordered interconnected VoIP providers to obtain from each existing customer, by November 28, 2005, the physical location at which the customer is using the service. *VoIP E911 Order*, 20 FCC Rcd at 10271, at paragraph 46, note 147. The Commission also required providers of interconnected VoIP services that can be utilized from more than one physical location to provide their end users with a method of updating information regarding the user's physical location. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46. The most recent location provided to an interconnected VoIP provider by a customer is the ''Registered Location.'' *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46. The Commission expected that customers of interconnected VoIP service providers would, in almost all cases, be able to provide their Registered Location in the form of a valid street address. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46, note 148. The Commission also emphasized that although it was not requiring interconnected VoIP providers to automatically determine the location of their end users, nothing in the *VoIP E911 Order* prevents an interconnected VoIP provider from automatically obtaining an accurate location if it is capable of doing so. *VoIP E911 Order*, 20 FCC Rcd at 10271, at paragraph 46, note 146.

The Commission further found that allowing customers of interconnected VoIP providers to opt in or opt out of E911 service is inconsistent with its obligation to ''encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs.'' *See VoIP E911 Order*, 20 FCC Rcd at 10271–10272, paragraph 47 (quoting Wireless Communications and Public Safety Act of 1999, Public Law Number 106–81, 113 Statute 1286, § 3(b) (1999)). In addition, in order to ensure that customers of interconnected VoIP services are aware of their interconnected VoIP service's actual E911 capabilities, the Commission required that all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, of the circumstances under which E911 service may *not* be available through the interconnected VoIP service, or may in some way be limited in comparison to traditional E911 service. *See VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48. The Commission also required VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood this advisory. *See VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48. Finally, in order to ensure that the advisory is available to all potential users of an interconnected VoIP service, the Commission required interconnected VoIP service providers to distribute to their subscribers stickers or labels warning if E911 service may be limited or unavailable, and to instruct subscribers to place them on or near the equipment used in conjunction with the interconnected VoIP service. *See VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48.

Discussion

The *NPRM* seeks comment on the means by which providers of VRS and

IP Relay services may determine the appropriate PSAP to contact when they receive an emergency call. As noted above, the Commission has waived the TRS emergency call handling mandatory minimum standard for VRS until January 1, 2006, and for IP Relay service until January 1, 2008. These waivers reflect the recognition that it is not currently technologically feasible for VRS or IP Relay service providers to automatically determine the location of the calling party because the Internet address associated with the incoming ''call'' to the relay center does not contain identifying information. Because VRS calls can be answered by a CA located in another city or state, if the CA simply dials 911, the CA would reach a PSAP for the area in which the CA (the VRS center) is located, not a PSAP for the area in which the caller is located.

Currently the most reliable way for persons with hearing or speech disabilities to reach emergency services is through the use of TTY directly, rather than through a relay service. Because PSAPs are required to be able to receive direct TTY calls, and such calls contain ANI, the PSAP can determine the location of the caller, even if the caller is unable to communicate after establishing the connection with the PSAP. At the same time, the Commission recognizes that many TRS users now solely rely on VRS, or IP Relay services, which require a broadband Internet connection, or and therefore such users may not have access to a telephone line or a TTY. Such users cannot make a direct call to a PSAP in the event of an emergency. The Commission recognizes that VRS and IP Relay service users, may need to make emergency calls through those services, and will rely on the VRS and IP Relay service providers to relay their calls (*i.e.*, make an outbound call) to a PSAP that can respond to the emergency. The Commission seeks to adopt a means of ensuring that such calls promptly reach the appropriate emergency service provider.

User Registration. As noted above, under the new rules for interconnected VoIP services, providers must obtain the primary location from which calls will be placed prior to initiating a customer's service. VoIP providers must also provide a way for users to update that location information. The Commission seeks comment on whether VRS and IP Relay service providers should be required to similarly register their customers—and obtain a Registered Location—so that they will be able to make the outbound call to the appropriate PSAP. The Commission also seeks comment on how such a registration requirement might work for first time users of a particular provider's VRS or IP Relay service. Further, the Commission seeks comment on whether there are other means by which VRS and IP Relay service providers may obtain Registered Location information, for example, by linking the serial number of the customer's VRS or IP Relay service terminal or equipment to that customer's registered location. Because each terminal has a unique identifying number, known as a Media Access Control (MAC) address, this could be used to identify or verify a user profile which contains the registered address. Finally, the Commission seeks comment on whether the same rules should apply to both VRS providers and IP Relay service providers, or whether the different natures of these services warrant different solutions.

The Commission recognizes that, in the past, some TRS users have expressed opposition to registration, noting that because voice telephone users did not have to ''register'' to obtain telephone service, and any such requirement would impose an additional burden on relay users alone. The *VoIP E911 Order* should allay that concern, since it imposes a similar registration requirement on voice telephone subscribers. The Commission also notes that many VRS and IP Relay service users currently create profiles to assist providers in handling and expediting their calls. *See, e.g., http://www.hamiltonrelay.com/internet/ip/profile.html* (an example of an IP Relay service provider's profile page that allows users to indicate their preferences concerning matters such as speed dialing and greetings). Accordingly, making similar profiles mandatory through registration, as a condition of using VRS and IP Relay service, may not be unduly intrusive or burdensome. The Commission seeks comment on whether the use of a registration system for VRS and IP Relay service is appropriate and consistent with Section 225's functional equivalency mandate. 47 U.S.C. 225(a)(3). The Commission seeks comment, generally, on any privacy considerations that might be raised by requiring VRS and IP Relay service users to provide location information as a prerequisite to using these services. The Commission also seeks comment on whether the Commission's TRS confidentiality rules are sufficient to address potential concerns related to providing personal information through the Internet. *See* 47 CFR 64.604(a)(2). The Commission seeks further comment on what measures providers have taken to ensure the privacy and security of relay calls. *See, e.g., 2004 TRS Report and Order*, 19 FCC Rcd at 12522, paragraph 51; *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd at 7791, paragraph 38. The Commission also seeks comment on whether, assuming some type of location registration requirement is adopted, the Commission should require specific information or place limits on the scope of the information that providers should be able to obtain.

VRS equipment, because it requires a video screen or television monitor, tends to remain at the same location, while IP Relay service may be accessed through any laptop computer or similar device that connects to the Internet, including handheld wireless devices. The Commission therefore seeks comment on how we might ensure that IP Relay service providers have current location information, *i.e.*, that the Registered Location is the actual location of the user when making a particular call. In the *VoIP E911 Order*, the Commission required providers to offer their customers a method of updating their location information. *VoIP E911 Order*, 20 FCC Rcd at 10271, paragraph 46. The Commission seeks comment on how it may ensure that VRS and IP Relay service providers have updated location information and the respective obligations of the providers and the customers in this regard. Should, for example, users be required to affirmatively acknowledge whether they are at their Registered Location each time they initiate a call, and if they are not at their Registered Location, be prompted or required to provide their present location?

The Commission currently requires TRS providers to include ''a clear and bold written statement on their Web sites and any VRS promotional materials explaining the shortcomings and potential dangers of using VRS to place an emergency call using 911,'' *see* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, Order, 17 FCC Rcd 157, at 162, paragraph 14 (December 31, 2001) (temporarily waiving mandatory minimum standards); *see also 2004 TRS Report and Order*, 19 FCC Rcd at 12522–3, paragraphs 116–118 (extending waivers and confirming warning requirement), so that those making a 911 call over TRS facilities understand the implications of placing such a call, particularly in the context of the Commission's encouragement to TRS users to access emergency services

directly. As discussed above, the Commission imposed obligations on interconnected VoIP service providers to advise customers of the limitations on E911 service, obtain customer's acknowledgements of such advice, and distribute warning labels to be placed on equipment used in conjunction with interconnected VoIP service. *VoIP E911 Order*, 20 FCC Rcd at 10272–10273, paragraph 48. In light of these requirements, the Commission seeks comment on whether, and if so, how the Commission's current requirements for VRS and IP Relay service providers should be revised. Should the Commission, for example, require that VRS and IP Relay service providers specifically advise new and existing subscribers of the circumstances under which E911 service may not be available through VRS and IP Relay service or may be in some way limited by comparison to traditional E911 service? Should VRS and IP Relay service providers be required to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood this advisory? Should the Commission require VRS and IP Relay service providers to provide appropriate warning labels for installation on CPE used in connection with VRS and IP Relay services? Should receipt of compensation from the interstate TRS Fund be conditioned on compliance with such requirements? What, if any, other requirements should be imposed on VRS and IP Relay service providers in this regard?

In the *VoIP E911 Order*, the Commission made clear that interconnected VoIP providers must use the Wireline E911 Network in transmitting E911 calls to the appropriate PSAP, and may not use a 10-digit number (so called ''administrative numbers''). The Commission seeks comment on whether the same rule should apply to VRS and IP Relay service providers handling emergency calls.

Finally, the Commission seeks comment on whether, VRS and IP Relay service calls could be routed in such a way that they necessarily include a VoIP call, therefore allowing registration for interconnected VoIP calls to satisfy the registration requirement for users of VRS and IP Relay service. Because outbound VRS, IP Relay service, and VoIP calls all use the Internet, the Commission seeks comment on whether, if VRS and IP Relay service users were also VoIP subscribers, their emergency VRS or IP Relay service calls could simultaneously be directed to both the VRS or IP Relay service provider and the emergency service tied to their Registered Location with the VoIP provider. The Commission also seeks comment on any other ways in which the requirements of the *VoIP E911 Order* may be applied to the use of VRS and IP Relay service to ensure access to emergency services.

PSAP Database. The Commission requires TRS providers to use PSAP databases to determine the appropriate PSAP to call in relaying an emergency call, and in the *2004 TRS Report and Order*, the Commission continued to require providers to maintain and update these databases. *TRS Second Improved Report and Order*, 18 FCC Rcd at 12407–12408, paragraph 42; *2004 TRS Report and Order*, 19 FCC Rcd at 12559–12560, paragraph 217. The Commission declined, however, to mandate a single national PSAP database that would be available to all TRS providers, noting that no national database exists for routing 911 calls. *2004 TRS Report and Order*, 19 FCC Rcd at 12560, paragraph 218. Are these existing requirements concerning the use of PSAP databases sufficient for VRS and IP Relay service providers handling emergency calls, or should they be modified? The Commission also seeks comment on whether a national database is feasible and appropriate for VRS and IP Relay service providers handling emergency calls. If so, how could such a database be implemented and maintained?

Priority Access to Emergency Calls. During busy periods, the CA may not be immediately available to handle an incoming VRS or IP Relay service call and, as a result, the caller may be put in a queue to wait for the next available CA. Because the ''85/10'' speed of answer rule applies to IP Relay service, such delays are less of a concern for IP Relay service. *See* 47 CFR 64.604(b)(2); *2005 VRS Order*, 20 FCC Rcd at 10254–10258, paragraphs 19–24. The Commission seeks comment on whether and how VRS and IP Relay service providers may identify incoming calls as emergency calls so that such calls can promptly be directed to a CA without waiting in a queue. The Commission also seeks comment on whether equipment can be modified to permit users to make an emergency call that will be promptly recognized as such by the providers, so that a VRS or IP Relay service user has the ability to make a call that is the equivalent of a 911 voice telephone call.

Multiple Providers. Several VRS and IP Relay service providers currently offer service, giving customers a choice of providers. In contrast, traditional TRS consumers must make intrastate TRS calls through the provider(s) selected by the state as part of the certified state TRS program. The Commission seeks comment on whether VRS and IP Relay service users should be required to register with each provider that they use, or whether a shared database could be established that could be accessed by all providers. The Commission also seeks comment on the advantages or disadvantages of using such a shared database.

Registration and Jurisdictional Separation of Costs. As a general matter, Section 225 of the Communications Act provides that states are responsible for compensating providers for the costs of intrastate TRS, and the Interstate TRS Fund is responsible for compensating providers for the costs of interstate TRS. *See* 47 U.S.C. 225(d)(3)(B). For traditional TRS calls made via the PSTN, providers can automatically determine if a particular call is interstate or intrastate, and bill either the appropriate state or the Interstate TRS Fund accordingly. For VRS and IP Relay service calls, however, because one leg of the call is via the Internet, it is presently not possible for a provider to determine if a particular call is interstate or intrastate. As a result, presently all VRS and IP Relay service calls are compensated from the Interstate TRS Fund.

In the *FNPRM* of the *2004 TRS Report and Order*, the Commission sought comment on possible means for applying jurisdictional separation of costs to VRS and IP Relay service calls. *See 2004 TRS Report and Order*, 19 FCC Rcd at 12561–12564, paragraphs 221–230 (IP Relay), 12567, paragraphs 241–242 (VRS). The Commission now seeks comment on whether a registration requirement for emergency call handling could also be used as a mechanism to allocate TRS costs between the interstate and intrastate jurisdictions. *See 2004 TRS Report and Order*, 19 FCC Rcd at 12567, paragraph 242. The Commission also seeks comment on whether, assuming all VRS and IP Relay service calls continue to be compensated from the Interstate TRS Fund, an exception should be made for emergency VRS and IP Relay service calls, so that they are paid for by the states or the Interstate TRS Fund, depending on the jurisdictional nature of the call. Further, the Commission seeks comment on any other alternatives for funding emergency VRS and IP Relay service calls.

Timelines. The Commission seeks comment on how much time it may reasonably take for providers to implement the solutions proposed in this *NPRM.* The Commission also seeks

comment on whether there continues to be any reason to have separate deadlines for complying with waived mandatory minimum standards for emergency call handling for VRS and IP Relay services. Finally, the Commission asks parties to provide any further information that may illuminate the issues raised in this *NPRM*.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104–121, 110 Statute 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

Under the Commission's regulations, providers of telecommunications relay services (TRS), mandated by Title IV of the Americans with Disabilities Act of 1990, *see* 47 U.S.C. 225, are required to handle emergency calls from service their customers. 47 CFR 64.604(a)(4). To do so, TRS providers must know the appropriate PSAP to call based on the location of the calling party. Because VRS and IP Relay service use the Internet rather than the PSTN for the leg of the call coming into the relay center, the relay center does not have a means of automatically detecting the location of the calling party. As a result, the emergency call handling requirement is presently waived for VRS and IP Relay service providers. Because of the importance of being able to call emergency services, the *NPRM* seeks comment on rules the Commission should adopt to ensure that VRS and IP Relay service providers can handle calls seeking access to emergency services and make an outbound call to an appropriate PSAP.

More specifically, the *NPRM* seeks comment on whether the Commission should adopt a registration process whereby VRS and IP Relay service providers would be required to establish, in advance, the primary location from which the VRS and IP Relay service users will be making calls, so the provider can identify the appropriate PSAP to contact. The *NPRM* addresses a number of issues concerning how a registration process for VRS and IP Relay service users might be implemented and whether imposing such a requirement would be consistent with Section 225 of the Communications Act. In addition, the *NPRM* addresses several related issues, including: (1) Whether VRS and IP Relay service calls could be structured in such a way that they necessarily include a VoIP call, so that the registration that is required by the *VoIP E911 Order* for users of interconnected VoIP service would satisfy the registration requirement for users of VRS and IP Relay service; (2) whether the Commission should adopt new requirements for providers to warn their customers of the limitations of using VRS and IP Relay service to make emergency calls and/or provide warning labels to be placed on equipment; (3) whether the Commission should adopt requirements that establish a national PSAP database; (4) whether it is possible for VRS and IP Relay service providers to recognize incoming calls as emergency calls so that such calls do not have to wait in a queue to be handled; (5) whether customer registration could be accomplished through a shared database, rather than individually databases for each provider; (6) whether the registration requirement could be used to determine whether calls are intrastate or interstate for purposes of jurisdictional separation of costs; and (7) how long it might take for providers to implement a registration process.

Legal Basis

The authority for the actions proposed in this *NPRM* may be found in Sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–205, 218 and 225, and §§ 64.601–64.608, 47 CFR 64.601–64.608 of the Commission's rules.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). The statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

As noted above, the TRS rule requiring providers to handle emergency calls (*i.e.*, to be able to make the outbound call to an appropriate PSAP) is presently waived for VRS and IP Relay service providers. The *NPRM* seeks comment on whether the Commission should adopt a registration process, or some other means, by which VRS and IP Relay service providers can ensure that can be routed to the appropriate PSAP. The Commission believes that the entities that may be affected by the proposed rules are only those TRS providers that offer IP Relay service and VRS. Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically directed toward TRS providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201 of the Commission's rules, NAICS Code 517110. Currently, there are eight TRS providers that offer VRS and/or IP Relay service, which consist of interexchange carriers, local exchange carriers, other common carriers, and non-profit organizations. Approximately five or fewer of these entities are small businesses under the SBA size standard. *See* National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *NPRM*'s proposed registration requirement, if adopted, would require VRS and IP Relay service providers to

obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized (*i.e.*, the ''Registered Location''), and to provide customers a way to update this information. The *NPRM* also asks whether VRS and IP Relay service calls could be routed in such a way that they necessarily include a VoIP call so that the registration that is required by the *VoIP E911 Order* for users of interconnected VoIP service would satisfy the registration requirement for users of VRS and IP Relay service. Third, the *NPRM* asks whether the Commission should impose new or additional requirements on providers to warn their customers of the limitations of using VRS and IP Relay service to make emergency calls, and to provide warning labels to be placed on equipment. Fourth, the *NPRM* asks whether the Commission should adopt new or additions for PSAP databases and/or require a national PSAP database. Fifth, the *NPRM* asks whether customer registration can be accomplished through a shared database, rather than individual database for each provider. Finally, the *NPRM* asks whether registration requirement could be used to determine whether calls are intrastate or interstate for purposes of jurisdictional separation of costs.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' 5 U.S.C. 603(c)(1) through (4).

This *NPRM* seeks comment on whether the Commission should adopt a registration process, or some other means, by which VRS and IP Relay service providers can ensure that emergency calls can be routed to the appropriate PSAP to contact. The *NPRM*, however, contemplates alternative means by which the Commission might ensure that VRS and IP Relay service providers can handle emergency calls. As noted, the Commission seeks comment on what ways VRS and IP Relay service providers currently seek to provide emergency services to their customers. Thus, there may be alternatives to direct regulation to achieve the Commission's public policy goals of ensuring the availability of 911 and E911 capability for VRS and IP Relay service users. Accordingly, the Commission seeks comment on such alternatives.

The *NPRM* asks whether VRS and IP Relay service calls could be routed in such a way that they necessarily include a VoIP call, so that the registration that is required by the *VoIP E911 Order* for interconnected VoIP users would satisfy the registration requirement for users of VRS and IP Relay service. Because outbound VRS, IP Relay service, and VoIP calls all use the Internet, if VRS and IP Relay service users that were also VoIP subscribers their emergency VRS or IP Relay service calls could simultaneously be directed to both the VRS or IP Relay service provider and the emergency service tied to their Registered Location with the VoIP provider. This alternative approach to ensuring access to emergency services could mitigate any burdens the proposed registration requirement might have on small businesses.

Third, the *NPRM* asks whether the Commission should impose new or different requirements on providers to warn their customers of the limitations of using VRS and IP Relay service to make emergency calls and/or provide warning labels to be placed on equipment. As noted in the *NPRM*, TRS providers already are required to advise user to make a direct call to a PSAP in the event of an emergency, rather than use VRS or IP Relay service. Because VRS or IP Relay service may sometimes be the only way for a user to make emergency calls, VRS or IP Relay service providers must be prepare to handle such calls (unless the emergency call handling requirement is waived). There may be a number of alternative ways providers can ensure that VRS and IP Relay service users are informed about the limitations of using these services for emergency calls, and the *NPRM* broadly seeks comment about such alternatives.

Fourth, the *NPRM* asks whether the Commission should require a national PSAP database. A single, national PSAP database might be preferable to multiple provider-maintained databases. One alternative under consideration is the creation of voluntary agreements among public safety trade associations, VRS and IP Relay service stakeholders, customers, and state and local E911 coordinators and administrators for VRS and IP Relay service to received enhanced 911 functionality. Promulgation of best practices or technical guidelines ensure that providers could determine an appropriate PSAP for a particular VRS or IP Relay service emergency call. The Commission therefore requests comment on the viability of such alternatives, especially with regard to the impact of each alternative on small businesses.

Fifth, the *NPRM* asks whether it is possible for providers to recognize incoming calls as emergency calls so that such calls do not have to wait in a queue. Providing such priority access to emergency calls would ensure that VRS and IP Relay service users would promptly reach a CA able to handle their emergency call. The Commission requests comment on alternative options for accomplishing this goal.

Sixth, because VRS and IP Relay service customers can choose from among several VRS and IP Relay service providers, and often use more than one, the *NPRM* seeks comment on whether any customer registration could be accomplished through a shared database, rather than individual databases for each provider. A shared database would likely be less onerous for providers because every provider would not have to register every customer.

Seventh, the *NPRM* asks whether registration could be used to determine whether calls are intrastate or interstate for purposes of jurisdictional separation of costs. If so, registration would solve the current compensation problem, the inability to determine if a VRS or IP Relay service call is intrastate or interstate, without putting additional burdens on the providers.

Finally, the *NPRM* asks how long it might take for providers to implement registration and whether registration could or should be implemented at the same time for VRS and IP Relay service. This question is asked to ensure that providers are not unduly burdened by having to comply with new rules for both services at the same time.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to Sections 1, 4(i) and (o), 225, 255, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 255, 303(r), 403, 554(g), and 606,

this Notice of Proposed Rulemaking *is adopted*.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–1368 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 71, No. 21

Wednesday, February 1, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Wednesday, January 31, 2006, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208–392–6681 or e-mail *dgochnour@fs.fed.us*.

Dated: January 25, 2006.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 06–922 Filed 1–31–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[06–GL–A]

Voluntary Cancellation of Global's Designation

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

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. Global Grain Inspection Services, Inc. (Global) (as a subsidiary of BSI Inspectorate America Corporation), is designated to provide domestic official inspection services until November 30, 2006, according to the Act. Global advised the Grain Inspection, Packers and Stockyards Administration (GIPSA) that they will cease providing official services on April 9, 2006. Accordingly, GIPSA is announcing that Global's designation will be canceled effective April 9, 2006. GIPSA is asking for applicants to provide domestic official inspection services in all or part of the specified geographic area in Texas.

DATES: Applications and comments must be received on or before March 3, 2006.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- Hand Delivery or Courier: Deliver to Janet M. Hart, Deputy Director, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- Fax: Send by facsimile transmission to (202) 690–2755, attention: Janet M. Hart.
- E-mail: Send via electronic mail to *Janet.M.Hart@usda.gov.*
- Mail: Send hardcopy to Janet M. Hart, Deputy Director, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Global, headquarters in Fort Worth, Texas, to provide official inspection services under the Act effective May 1, 2005, and terminating November 30, 2006.

Section 7(g)(1) of the Act provides that designations of official agencies will end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. Global's designation ends November 30, 2006, according to the Act. However, Global asked GIPSA for a voluntary cancellation of their designation effective April 9, 2006. Accordingly, Global's designation will cease effective April 9, 2006, and GIPSA is asking for applicants to provide domestic official inspection services.

Pursuant to Section (7)(2) of the Act, the following geographic area, in the State of Texas, is assigned to Global.

Bounded on the north by the northern Jack, Wise, Denton, Collin, Hunt, Delta, Franklin, Titus, Morris, and Marion County line east to the Texas State line; Bounded on the east by the eastern Texas State line south to the southern Texas State line; Bounded on the south by the southern Texas State line west to the western Val Verde County line; Bounded on the west by the western Val Verde, Edwards, Kimble, Mason, San Saba, Mills, Comanche, Erath, Palo Pinto, and Jack County lines north to the northern Jack County line.

Global's assigned geographic area does not include the export port locations inside Global's area which are serviced by GIPSA. Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.usda.gov/gipsa/oversight/parovreg.htm.*

Authority: Pub.L. 94–582, 90Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–1337 Filed 1–31–06; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: This notice announces our intention to request a 3-year extension and revision of a currently approved information collection in support of the reporting and recordkeeping requirements for the Swine Contract Library program. This approval is required under the Paperwork Reduction Act.

DATES: We will consider comments that we receive by April 3, 2006.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-mail: Send comments via electronic mail to *comments.gipsa@usda.gov.*
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Background Documents: Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For information regarding the information collection activities and the use of the information, contact Bryice Wilke, at (515) 323–2579 or *Bryice.A.Wilke @usda.gov*.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is responsible for maintaining the Swine Contract Library, which is authorized by the Packers and Stockyards Act and requires that certain hog packers submit hog procurement contracts and delivery estimates to GIPSA. Reauthorization of the Swine Contract Library by Congress is pending, and is anticipated this year; in the interim, packers are voluntarily submitting information for the Swine Contract Library. Due to the length of time required to renew information collection approvals, in anticipation of the reauthorization of the Swine Contract Library program, we are publishing this notice to announce our intention to request approval from the Office of Management and Budget to continue collecting the required information. This information collection notice descries the requirements as they exist under the Swine Contract Library legislation even though that legislation is not currently in effect. Therefore, the language will indicate, for example, that packers are ''required'' to submit certain information. If the Swine Contract Library is not reauthorized we will determine if continuing the program on a voluntary basis would provide a benefit to the agency and market participants. The regulations implementing the Swine Contract Library are contained in 9 CFR part 206.

Title: Swine Contract Library.

OMB Number: 0580–0021.

Expiration Date of Approval: July 31, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collection and recordkeeping requirements for the Swine Contract Library are essential to maintaining the mandatory library of swine marketing contracts and reporting the number of swine contracted for delivery. There are currently 32 packers that are required to file contracts and report certain information on deliveries for a total of 51 plants that they operate or at which they have swine slaughtered. We expect the overall number of plants and packers to remain relatively constant, but the specific packers required to report will vary with consolidation and construction in the industry. Of the initial 32 reporting packers operating 51 plants, 2 packers operating 1 plant each have ceased business, 2 plants operated by different packers have fallen below the reporting threshold, and 2 plants operated by different packers have ceased slaughtering but continue to operate as processing facilities. Since reporting began in 2003, two packers operating one plant each have increased slaughter levels above the reporting threshold and two packers have built new plants that slaughter or expect to slaughter above the threshold level. One packer utilizing custom slaughter facilities has increased slaughter above the threshold level.

Packers are required to report information for individual plants even in instances when a given company owned or used more than one plant. The information collection burden estimate provided below are based on time and cost requirements at the plant level, so packers that report for more than one plant would bear a cost that would be a multiple of the per-plant estimates.

We understand from discussions with packers complying with current reporting requirements that reporting packers have adapted pre-existing data and information systems to provide the required information.

There are two types of information collections required for the Swine Contract Library.

The first information collection requirement consists of submitting example contracts. Initially, a packer submits example contracts currently in effect or available for each swine processing plant that is subject to the regulations. Subsequently, a packer submits example contracts for any offered, new, or amended contracts that vary from previously submitted contracts in regard to the base price determination, the application of a ledger or accrual account, carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), or the use and amount of noncarcass merit premiums or discounts. The initial submission of example contracts requires more time than subsequent filings of new contracts or changes, as packers initially need to review all their contracts to identify the unique types that need to be represented by an example submitted to GIPSA. Thereafter, subsequent filings require a minimal amount of effort on the part of packers, as only example contracts that represent a new or different type need to be filed with GIPSA. An optional contract submission cover sheet is available, but not required, for submitting example contracts. Approximately half the packers currently subject to the regulations use the optional cover sheet for contract

submissions. This cover sheet is required for putting the contract into our system; if a contract is submitted without a cover sheet, one is completed by GIPSA staff.

The required submission of contracts includes both written and verbal contracts. Packers have added documentation of verbal contracts to their existing recordkeeping systems in order to comply with this requirement. The optional form that is available, but not required, for reporting verbal contracts is used by 10 packers; 1 packer that relies heavily on verbal contracts uses this optional form exclusively to document its verbal contracts. Of 664 contract files on file, the optional verbal contract sheet was used to document 137 verbal contracts.

The second information collection requirement is a monthly filing of summary information on form P&SP–341, Packer/Plant Report, Estimates of Swine Committed to Be Delivered Under Contract. The form for the monthly filing is simple and brief. For new packers required to start reporting, this data should be available in the packers' existing record systems. Electronic submission is encouraged and we provide the necessary information on procedures to submit data to GIPSA electronically. Web submissions account for 43 percent of all monthly report submissions received. Usage of the electronic submission option for the monthly reports has steadily increased since the implementation of the regulations with 41 percent submitted via the web in 2003, 56 percent submitted via the web in 2004, and 67 percent submitted via the web in 2005.

The estimates of time requirements used for the burden estimates below were developed in consultation with GIPSA personnel knowledgeable of the industry's recordkeeping practices. The estimates also reflect our experience in assembling large amounts of data during the course of numerous investigations involving use of data collected from the industry. Estimates of time requirements and hourly wage costs for developing electronic recordkeeping and reporting systems are based on our experience in developing similar systems, in consultation with our automated information systems staff.

(1) Submission of Contracts (no form required; optional form available)

Estimate of Burden: Reporting burden for submission of contracts is estimated to include 4 hours per plant for an initial review of all contracts to categorize them into types and identify unique examples, plus an additional 0.25 hours per unique contract identified during the initial review to submit an example of that contract. After the initial filing, the reporting burden is estimated to include 0.25 hours per plant to submit an example of each new or amended contract.

Respondents: Packers required to report information for the Swine Contract Library.

Estimated Number of Respondents: 32 packers (total of 51 plants).

Estimated Number of Responses per Plant: Number of responses per plant vary. Some plants would have no contracts, while others could have up to 80 contracts. We receive an average of six example contracts per plant per year for offered contracts and amended existing or available contracts.

Estimated Total Annual Burden on Respondents: Initial filing: 5.5 total hours for the initial filing of examples of existing contracts by all plants newly subject to the regulations combined. Based on changes in the industry, we anticipate one new plant to become subject to the regulations each year. Calculated as follows:

(4 hours per plant for initial review) × (1 new plant) = 4 hours for initial review;
(0.25 hours per contract) × (6 example contracts per plant) × (1 new plant) = 1.5 hours;
(4 hours) + (1.5 hours) = 5.5 total hours.

Thereafter, 76.5 total hours annually for all subsequent filing of examples of offered or amended existing or available contracts by all plants combined, based on an average of 6 offered or amended existing or available contracts annually. Calculated as follows: (0.25 hours per contract) × (6 example contracts per plant) × (51 plants) = 76.5 hours

Total Cost: Initial filing $138 for all plants combined. Calculated as follows:

(5.5 hours) × ($25 per hour) = $138

Thereafter, $1,913 annually for all plants combined for submission of subsequent filings. Calculated as follows:

(76.5 hours) × ($25 per hour) = $1,913

(2) Submission of Monthly Swine Marketing Contract Report (Form P&SP–341)

Estimate of Burden: The reporting burden for compiling data, completing and submitting the form is estimated to average 2 hours per manually prepared and submitted (via mail or facsimile) report and 1 hour per electronically prepared and submitted report. There would be an estimated additional one-time set up burden of 1 hour at a cost of $55 per plant for a packer that chose to create a spreadsheet or database for recordkeeping and preparation of monthly estimates. There would be an estimated additional 2 hour burden at a cost of $55 per hour or $110 per plant for a packer to develop procedures to extract and format the required information and to develop an interface between the packer's electronic recordkeeping system and GISPA's system. The hourly rate for development of electronic tools is assumed to be higher due to the need to use personnel with specialized computer skills.

Respondents: Packers required to report information for the Swine Contract Library.

Estimated Number of Respondents: 32 packers (total of 51 plants).

Estimated Number of Responses per Plant: 12 (1 per month for 12 months).

Estimated Total Annual Burden on Respondents: 1,224 hours for all plants combined if all plants used manual compiling, preparation, and submission. Calculated as follows:

(2 hours per response) × (51 plants) × (12 responses per plant) = 1,224 hours

612 hours for all plants combined if all plants use electronic compiling, preparation, and submission. Calculated as follows:

(1 hour per response) × (51 plants) × (12 responses per plant) = 612 hours.

Total Cost: $30,600 annually for all plants combined if all use manual submission. Calculated as follows:

(1224 hours) × ($25 per hour) = $30,600

$15,300 annually for all plants combined if all were to completely utilize electronic preparation and submission. Calculated as follows:

(612 hours) × ($25 per hour) = $15,300

Additional $165 one-time set-up cost if all plants newly subject to the regulations were to completely utilize electronic systems for preparation and submission. Calculated as follows:

(1 hour build spreadsheet/database) + (2 hours develop electronic interface) = 3 hours
(3 hours total development) × ($55.00 per hour) × (1 new plant) = $165.00

Most entities have chosen to use electronic recordkeeping and reporting methods. Thus, the cost burden to respondents would be at the lower end of the range provided. We estimate the range of costs in the first year for a packer reporting for one plant would be $640 using electronic submission and $775 for manual submission. In subsequent years, we estimate the range of costs would be $338 using electronic submission and $638 for manual submission.

The Paperwork Reduction Act also requires GIPSA to measure the

recordkeeping burden. Under the P&S Act and its existing regulations, each packer is required to maintain and make available upon request such records as are necessary to verify information on all transactions between the packer and producers from whom the packer obtains swine for slaughter. Records that packers are required to maintain under existing regulations would meet the requirements for verifying the accuracy of information required to be reported for the Swine Contract Library. These records include original contracts, agreements, receipts, schedules, and other records associated with any transaction related to the purchase, pricing, and delivery of swine for slaughter under the terms of marketing contracts. Additional annual costs of maintaining records would be nominal since packers are required to store and maintain such records as a matter of normal business practice and in conformity with existing regulations.

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request 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 will have practical utility;

(b) 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;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden on 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.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–1335 Filed 1–31–06; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection: comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the Housing Preservation Grant Program.

DATES: Comments on this notice must be received by April 3, 2006 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD–Federal Information Relay Service) or via e-mail at, *Bonnie.Edwards@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Housing Preservation Grants.

OMB Number: 0575–0115.

Expiration Date of Approval: July 31, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary purpose of the Housing Preservation Grant Program is to repair and rehabilitate individual housing, rental properties, or co-ops owned or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental properties and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation of dwellings to bring them up to code or minimum property standards. Where repair and rehabilitation assistance is not economically feasible or practical the replacement of existing, individual owner occupied housing is available.

These grants were established by Public Law 98–181, the Housing Urban-Rural Recovery Act of 1983, which amended the Housing Act of 1979 (Pub. L. 93–383) by adding section 533, 42 U.S.C. S 2490(m), Housing Preservation Grants (HPG). In addition, the Secretary of Agriculture has authority to prescribe rules and regulations to implement HPG and other programs under 42 U.S.C. 1480(j).

Section 533(d) describes the information applicants are to submit to RHS as part of their application and in the assessments and criteria RHS is to use in selecting grantees. An applicant is to submit a ''statement of activity'' describing its proposed program, including the specific activities it will undertake and its schedule. RHS is required in turn to evaluate proposals on a set of prescribed criteria, for which the applicant will also have to provide information, such as: (1) Very low- and low-income persons proposed to be served by the repair and rehabilitation activities; (2) participation by other public and private organizations to leverage funds and lower the cost to the HPG program; (3) the area to be served in terms of population and need; (4) cost data to assure greatest degree of assistance at lowest cost; (5) administrative capacity of the applicant to carry out the program. The information collected will be the minimum required by law and by necessity for RHS to assure that it funds responsible grantees proposing feasible projects in areas of greatest need. Most data are taken from a localized area, although some are derived from census reports of city, county and Federal governments showing population and housing characteristics.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .83 hours per response.

Respondents: A public body or a public or private nonprofit corporation.

Estimated Number of Respondents: 2,423.

Estimated Number of Responses per Respondent: 5.8.

Estimated Total Annual Burden on Respondents: 11,678 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch at 202–692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of proposed collection of information including the validity of the

methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: January 20, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E6–1276 Filed 1–31–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Fisheries Observer Program Fishermen's Comment Card.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 260.

Number of Respondents: 520.

Average Hours Per Response: 15 minutes.

Needs and Uses: The Comment Card will help Northeast Fisheries Observer Program assess observer performance (*i.e.*, contractor performance), ensure higher data quality, help to detect fraud and provide the fishermen with a direct line of communication to the program management. This is a tailored qualitative customer survey for fishermen having had observers on their vessels to provide direct feedback on observer performance to the National Marine Fisheries Service. This will be collected on a voluntary basis. The Fishermen's Comment Card is available to all fishermen who have had a certified Northeast Fisheries Observer Program observer onboard their vessel. The captain, owner, or crew member in charge may complete the survey.

Affected Public: Business or other for-profit organizations.

Frequency: Semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: January 26, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1300 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA Coastal Services Center Coastal Resource Management Customer Survey.

Form Number(s): None.

OMB Approval Number: 0648–0308.

Type of Request: Regular submission.

Burden Hours: 250.

Number of Respondents: 500

Average Hours Per Response: 30 minutes.

Needs and Uses: This survey will be used by the NOAA Coastal Services Center to obtain information from our customers about their natural resource management issues, their information needs, and their technological capabilities in order to make quality improvements to our products and services. The respondents will be from the coastal natural resource management community.

Affected Public: State, Local or Tribal government, Federal government.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: January 26, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1301 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2007 Economic Census Covering the Wholesale Trade Sector

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Yvonne Wade, U.S. Census Bureau, Room 2682, Building 3, Washington, DC 20233–0001, (301) 763–2661 (or via the Internet at *mywade@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The economic census, conducted under authority of Title 13, United States Code (USC), is the primary source of facts about the structure and functioning of the Nation's economy. Economic statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The 2007 Economic Census covering the Wholesale Trade sector (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of more than 450,000 establishments. The information collected will produce basic statistics by kind of business on the number of establishments, sales, payroll, and employment. It will also yield a variety of subject statistics, including sales by product line, sales by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase reporting through standardized questionnaires and broader electronic data collection methods.

II. Method of Collection

Mail Selection Procedures: Establishments in the Wholesale Trade sector of the economic census will be selected from the Census Bureau's Business Register for a mail canvass. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the Wholesale Trade sector; (ii) it must be an active operating establishment of a multi-establishment firm (i.e., a firm that operates at more than one physical location); and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

1. Establishments of Multi-Establishment Firms

All active operating establishments of multi-establishment firms will be included in the mail component of the potential respondent universe. We estimate that the 2007 Economic Census mail canvass for the Wholesale Trade sector will include approximately 126,000 establishments of multi-establishment firms.

2. Single-Establishment Firms With Payroll

All single-establishment firms having annualized payroll (from Federal administrative records) will be included in the mail component of the potential respondent universe. We estimate that the 2007 Economic Census mail canvass for the Wholesale Trade sector will include approximately 324,000 establishments of single-establishment firms.

III. Data

OMB Number: None.

Form Number: The 42 standard forms and ownership or control flier used to collect information from businesses in this sector of the Economic Census are tailored to specific business practices and are too numerous to list separately in this notice. Requests for information on the proposed content of the forms should be directed to M. Yvonne Wade, U.S. Census Bureau, Room 2682, Building 3, Washington, DC 20233–0001, (301) 763–2661 (or via the Internet at *mywade@census.gov*).

Type of Review: Regular review.

Affected Public: State or local government, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 450,000.

Estimated Time per Response: 1 hour and 30 minutes.

Estimated Total Annual Burden Hours: 675,000.

Estimated Total Annual Cost: $16,652,250.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1296 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Housing Starts, Sales, and Completions

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 763–5161 (or via the Internet at *Erica.mary.filipek @census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the current Office of Management and Budget (OMB) clearance of the Survey of Housing Starts, Sales and Completions, also known as the Survey of Construction (SOC), to collect monthly data on new residential construction from a sample of owners or builders. The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaires SOC–QI/SF.1 and SOC–QI/MF.1 to collect data on start and completion dates of construction, physical characteristics of the structure (floor area, number of bathrooms, type of heating system, etc), and if applicable, date of sale, sales price, and

type of financing. The SOC program provides widely used measures of construction activity, including the economic indicators Housing Starts and Housing Completions, which are from the New Residential Construction series, and New Residential Sales.

We sample about 2,350 new buildings each month (28,200 per year). We inquire about the progress of each building multiple times until it is completed (and a sales contract is signed, if it is a single-family house that is built for sale). We conduct an average of 6.25 interviews for each building sampled. The total number of interviews conducted each year is about 176,250. Each interview takes 5 minutes on average. Therefore the total annual burden is 14,688 hours.

We do not plan any changes to the SOC–QI/SF.1 and SOC–QI/MF.1 forms.

II. Method of Collection

The Census Bureau uses its field representatives to collect the data. The field representatives conduct interviews to obtain data.

III. Data

OMB Number: 0607–0110.

Form Number: SOC–QI/SF.1 and SOC–QI/MF.1.

Type of Review: Regular review.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 28,200.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 14,688.

Estimated Total Annual Cost to the Public: $386,441. The estimated cost is based on an average hourly pay for respondent to be $26.31. This estimate was taken from the Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics Survey for 2004.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1298 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2007 Economic Census Covering the Retail Trade and Accommodation and Food Services Sectors

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Fay Dorsett, U.S. Census Bureau, Room 2679, Building 3, Washington, DC 20233–0001 (301–763–2687 or via the Internet at *fdorsett@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The economic census, conducted under authority of Title 13, United States Code (USC), is the primary source of facts about the structure and functioning of the Nation's economy. Economic statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The economic data are the Census Bureau's primary program commitment during nondecennial census years. The 2007 Economic Census covering the retail trade and accommodation and food services sectors (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of more than 1.8 million establishments. The information collected will produce basic statistics by kind of business on the number of establishments, sales, payroll, and employment. It will also yield a variety of subject statistics, including sales by product line, sales by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase reporting through standardized questionnaires and broader electronic data collection methods.

II. Method of Collection

Mail Selection Procedures: Establishments in the retail trade and accommodation and food services sectors of the economic census will be selected from the Census Bureau's Business Register for a mail canvass. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the retail trade or accommodation and food services sector; (ii) it must be an active operating establishment of a multi-establishment firm (*i.e.*, a firm that operates at more than one physical location), or it must be a single-establishment firm with payroll (*i.e.*, a firm operating at only one physical location); and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

1. Establishments of Multi-Establishment Firms

All active operating establishments of multi-establishment firms will be included in the mail component of the potential respondent universe. We estimate that the 2007 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 722,000 establishments of multi-establishment firms.

2. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the

potential respondent universe. This study will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry or kind of business. This payroll size distinction will affect selection as follows:

a. *Large Single-Establishment Firms*—All single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry will be included in the mail component of the potential respondent universe. We estimate that the 2007 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 553,000 large single-establishment firms.

b. *Small Single-Establishment Firms*—A sample of single-establishment firms having annualized payroll below the cutoff for their industry will be included in the mail component of the potential respondent universe. Sampling strata and corresponding probabilities of selection will be determined by a study of the potential respondent universe conducted shortly before the mail selection operations begin. We estimate that the 2007 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 133,000 small single-establishment firms selected in this sample.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. Generally, we will not include these small employers in the census mail canvasses. However, administrative records sometimes have fundamental industry classification deficiencies that make them unsuitable for use in producing detailed industry statistics by geographic area. When we find such a deficiency, we will mail the firm a census classification form. We estimate that the 2007 Economic Census mail canvasses for the retail trade and accommodation and food services sectors will include approximately 445,000 small single-establishment firms that receive these forms.

III. Data

OMB Number: None.

Form Number: The 33 standard forms, seven classification forms, and two ownership or control fliers used to collect information from businesses in these sectors of the Economic Census are tailored to specific business practices and are too numerous to list separately in this notice. Requests for information on the proposed content of the forms should be directed to Fay Dorsett, U.S. Census Bureau, Room 2679, Building 3, Washington, DC 20233–0001 (301–763–2687 or via the Internet at *fdorsett@census.gov*).

Type of Review: Regular review.

Affected Public: State or local governments, business or other for-profit organizations, or non-profit institutions.

Estimated Number of Respondents: 1,853,000.

Retail Trade (Standard Form)—964,000; Retail Trade (Classification Form)—194,000; Accommodation and Food Services (Standard Form)—444,000; and Accommodation and Food Services (Classification Form)—251,000.

Estimated Time Per Response: Retail Trade (Standard Form)—1 hour; Retail Trade (Classification Form)—12 minutes; Accommodation and Food Services (Standard Form) — 1 hour; and Accommodation and Food Services (Classification Form)—12 minutes.

Estimated Total Annual Burden Hours: 1,497,000.

Retail Trade (Standard Form)—964,000
Retail Trade (Classification Form)—38,800
Accommodation and Food Services (Standard Form)—444,000
Accommodation and Food Services (Classification Form)—50,200

Estimated Total Annual Cost: $36,930,990.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., 131 and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1303 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with § 351.213(2004) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of February 2006,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

[1] Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when the Department is closed.

Antidumping duty proceedings	Period
Brazil: Stainless Steel Bar, A–351–825	2/1/05–1/31/06
Frozen Warmwater Shrimp, A–351–838	8/4/04–1/3l/06
Ecuador: Frozen Warmwater Shrimp, A–331–802	8/4/04–1/31/06
France: Certain Cut-to-Length Carbon-Quality Steel Plate, A–427–816	2/1/05–2/10/05
Uranium A–427–818	2/1/05–1/31/06
Germany: Sodium Thiosulfate, A–428–807	2/1/05–3/7/05
India: Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/05–1/31/06
Forged Stainless Steel Flanges, A–533–809	2/1/05–1/31/06
Frozen Warmwater Shrimp, A–533–840	8/4/04–1/31/06
Stainless Steel Bar, A–533–810	2/1/05–1/31/06
Certain Preserved Mushrooms, A–533–813	2/1/05–1/31/06
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/05–1/31/06
Certain Preserved Mushrooms, A–560–802	2/1/05–1/31/06
Italy: Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/05–1/31/06
Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/05–1/31/06
Japan: Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/05–1/31/06
Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/05–1/31/06
Mechanical Transfer Presses, A–588–810	2/1/05–6/21/05
Stainless Steel Bar, A–588–833	2/1/05–1/31/06
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/05–1/31/06
Mexico: Welded Large Diameter Line Pipe, A–201–828	2/1/05–1/31/06
Philippines: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/05–1/31/06
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/05–1/31/06
Stainless Steel Butt-Weld Pipe Fittings, A–580–813	2/1/05–1/31/06
Taiwan: Forged Stainless Steel Flanges, A–583–821	2/1/05–1/31/06
Thailand: Frozen Warmwater Shrimp, A–549–822	8/4/04–1/31/06
The People's Republic of China: Axes/adzes, A–570–803	2/1/05–1/31/06
Bars/wedges, A–570–803	2/1/05–1/31/06
Certain Preserved Mushrooms, A–570–851	2/1/05–1/31/06
Creatine Monohydrate, A–570–852	2/1/05–2/4/05
Frozen Warmwater Shrimp, A–570–893	7/16/04–1/31/06
Hammers/sledges, A–570–803	2/1/05–1/31/06
Natural Bristle Paint Brushes and Brush Heads, A–570–501	2/1/05–1/31/06
Picks/mattocks, A–570–803	2/1/05–1/31/06
Sodium Thiosulfate, A–570–805	2/1/05–3/7/05
The United Kingdom: Sodium Thiosulfate, A–412–805	2/1/05–3/7/05
Socialist Republic of Vietnam: Frozen Warmwater Shrimp, A–552–802	7/16/04–1/31/06
France: Certain Cut-to Length Carbon Quality Steel Plate, C–427–817	1/1/05–12/31/05
Low Enriched Uranium, C–427–819	1/1/05–12/31/05
Germany: Low Enriched Uranium, C–428–829	1/1/05–12/31/05
India: Certain Cut-to-Length Carbon-Quality Steel Plate, C–533–818	1/1/05–12/31/05
Prestressed Concrete Steel Wire Strand, C–533–829	1/1/05–12/31/05
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate, C–560–806	1/1/05–12/31/05
Italy: Certain Cut-to-Length Carbon-Quality Steel Plate, C 475–827	1/1/05–12/31/05
Netherlands: Low Enriched Uranium, C–421–809	1/1/05–12/31/05
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/05–12/31/05
The United Kingdom: Low Enriched Uranium, C–412–821	1/1/05–12/31/05

Suspension Agreements

None.

In accordance with § 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act, may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See* also the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of February 2006. If the Department does not receive, by the last day of February 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from use, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 24, 2006.

Thomas F. Futtner,

Acting Office Director AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E6–1342 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty order in part.

DATES: Effective Date: February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Honey from Argentina with respect to two exporters.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2006.

Antidumping duty proceedings	Period to be reviewed
Argentina: Honey, A–357–812	12/01/04–11/30/05
Asociacion de Cooperativas Argentinas,	
Agroin Las Piedras Ltda.,	
Algodonera Avellaneda S.A.,	
Alimentos Naturales-Natural Foods,	
Apisur S.A.,	
Baires Logistics SRL,	
Campos Silvestres S.A.,	
Compania Apicola Argentina SA,	
El Mana, S.A.,	
HoneyMax S.A.,	
J.L. S.A.,	
Mielar S.A.,	
Naiman S.A.,	
Nexco S.A.,	
Nutrin S.A.,	
Pueblanueva S.A.-Miel Emilia,	
Radix S.r.L.,	
Seylinco S.A.,	
Ultramar Argentina SA.	
Brazil: Silicomanganese, A–351–824	12/1/04–11/30/05
Rio Doce Manganes S.A.,	
Companhia Paulista de Ferro-Ligas,	
Urucum Mineracao S.A.	
India: Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	12/1/04–11/30/05
Essar Steel Ltd.	
Stainless Steel Wire Rod, A–533–808	12/1/04–11/30/05
Mukand, Ltd.,	
The Viraj Group (Viraj Alloys, Ltd., Viraj Forgings,	
Ltd., Viraj Impoexpo Ltd., Viraj Smelting,	
Viraj Profiles, and VSL Wires, Ltd.).[1]	
Taiwan: Certain Welded Stainless Steel Pipe, A–583–815	12/1/04–11/30/05
Froch Enterprise (formerly Jaung Yuann Enterprise Co., Ltd.).	
The People's Republic of China: Carbazole Violet Pigment 23[2], A–570–892	6/24/04–11/30/05
Nantong Haidi Chemical Company,	
Tianjin Hanchem International Trading Company, Ltd.,	

Antidumping duty proceedings	Period to be reviewed
Trust Chem Co., Ltd./Boson Enterprises Ltd.	
Certain Cased Pencils [3], A–570–827	12/1/04–11/30/05
Beijing Dixon Stationery Company Ltd.,	
China First Pencil Company, Ltd.*,	
China First Pencil Fang Zheng Co.*,	
Orient International Holding Shanghai Foreign Trade Co., Ltd.,	
Shandong Rongxin Import & Export Co., Ltd.,	
Shanghai First Writing Instrument Co., Ltd.*,	
Shanghai Great Wall Pencil Co., Ltd.*,	
Shanghai Three Star Stationary Industry Corp.*,	
Tianjin Custom Wood Processing Co., Ltd..	
Hand Trucks and Parts Thereof [4], A–570–891	5/24/04–11/30/05
Aulita Quindao Manufacturing Co., Ltd.,	
Qingdao Huatian Hand Truck Co., Ltd.,	
Qingdao Taifa Group Co., Ltd./Quindao Yinzhu Hand Truck Factory,	
True Potential Co., Ltd.,	
Qingdao Future Tool, Inc.,	
Shandong Machinery I & E Group Corp.,	
Formost Plastics & Metalworks (Jiaxing) Co., Ltd.,	
Forecarry Corp.,	
Since Hardware (Guangzhou) Co., Ltd.	
Honey [5], A–570–863	12/1/04–11/30/05
Anhui Honghui Foodstuff (Group) Co., Ltd.,	
Anhui Native Produce Import and Export Corporation,	
Apiarist Co.,	
Cheng Du Wai Yuan Bee Products Co., Ltd.,	
Eurasia Bee's Products Co., Ltd.,	
Foodworld International Club, Ltd.,	
Henan Native Produce Import and Export Corporation,	
High Hope International Group Jiangsu Foodstuffs Import and Export Corporation,	
Inner Mongolia Autonomous Region Native Produce and Animal By-Products, Import and Export Corporation,	
Inner Mongolia Autonomous Region Native Produce and Animal By-Products,	
Inner Mongolia Youth Trade Development Co., Ltd.,	
Jiangsu Kanghong Natural Healthfoods Co., Ltd.,	
Jinfu Trading Co., Ltd.,	
Kunshan Foreign Trading Company,	
Kunshan Xin'an Trade Co., Ltd.,	
Qinhuangdao Municipal Dafeng Industrial Co., Ltd.,	
Shanghai Eswell Enterprise Company Ltd.,	
Shanghai Shinomiel International Trade Corporation,	
Shanghai Taiside Trading Co., Ltd.,	
Shanghai Xiuwei International Trading Co., Ltd.,	
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.,	
Tianjin Eulia Honey Co., Ltd.,	
Wuhan Bee Healthy Co., Ltd.,	
Wuhan Shino-Food Trade Co., Ltd.,	
Wuhu Qinshi Tangye,	
Zhejiang Native Produce and Animal By-Products Import and Export Corporation, a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation,	
Zhejiang Willing Foreign Trading Co., Ltd.	
Malleable Cast Iron Pipe Fittings [6], A–570–881	12/1/04–11/30/05
Beijing Sai Lin Ke Hardware Co., Ltd.	
Argentina: Honey [7], C–357–813	1/1/05–12/31/05
India: Certain Hot-Rolled Carbon Steel Flat Products, C–533–821	1/1/05–12/31/05
Essar Steel, Ltd.	

*We collapsed China First Pencil Co., Ltd. with Shanghai Three Star Stationary Industry Corp. and with its subsidiaries Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and China First Pencil Fang Zheng Co., Ltd. in previous segments of this proceeding. For this review we consider these parties to constitute a single entity.

[1] The Department revoked the order in part with respect to entries of subject merchandise produced and exported by Viraj Alloys, Ltd., and VSL Wires, Ltd., effective December 1, 2003. *See Stainless Steel Wire Rod from India: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part,* 70 FR 40318 (July 13, 2005). The Department is conditionally initiating a review with respect to Viraj Alloys, Ltd., Viraj Forgings, Ltd., Viraj Impoexpo Ltd., Viraj Smelting, Viraj Profiles, and VSL Wires, Ltd., pending further information from the requestor as to sales of subject merchandise not covered by the revocation.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of Carbazole Violet Pigment 23 from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Cased Pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Hand Trucks and Parts Thereof from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above named companies does not qualify for a separate rate, all other exporters of Honey from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part. Additionally, for those companies for which we are conducting a new shipper review, this administrative review will only cover entries not covered by those new shipper reviews.

[6] If one of the above named companies does not qualify for a separate rate, all other exporters of Malleable Cast Iron Pipe Fittings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] In accordance with section 351.213(b) of the regulations, the petitioners have requested an administrative review of this countervailing duty order. No individual exporters requested the review pursuant to section 351.213(b) of the regulations. Accordingly, the Department will be conducting the review of this order on an aggregate basis.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 27, 2006.

Thomas F. Futtner,

Acting Office Director AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E6–1344 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2006

The following Sunset Reviews are scheduled for initiation in March 2006 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Stainless Steel Bar from Brazil (A–351–825) (2nd Review)	Zev Primor (202) 482–4114
Stainless Steel Bar from India (A–533–810) (2nd Review)	David Goldberger (202) 482–4136
Stainless Steel Bar from Japan (A–588–833) (2nd Review)	Zev Primor (202) 482–4114
Stainless Steel Bar from Spain (A–469–805) (2nd Review)	Zev Primor (202) 482–4114
Countervailing Duty Proceedings.	
No countervailing duty proceedings are scheduled for initiation in March 2006..	
Suspended Investigations.	
No suspended investigations are scheduled for initiation in March 2006..	

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Puruant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initition.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 24, 2006.

Thomas F. Futtner,

Acting Office Director,AD/CVD Operations, Office 4,for Import Administration.

[FR Doc. E6–1345 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five–Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five–year (''Sunset Reviews'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five–Year Review* which covers these same orders.

EFFECTIVE DATE: February 1, 2006.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five–Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five–Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–475–811	731–TA–659	Italy	Grain–Oriented Electrical Steel (2nd Review)	Dana Mermelstein (202) 482–1390
A–588–831	731–TA–660	Japan	Grain–Oriented Electrical Steel (2nd Review)	Dana Mermelstein (202) 482–1390
A–570–831	731–TA–683	PRC	Fresh Garlic (2nd Review)	Maureen Flannery (202) 482–3020
C–475–812	701–TA–355	Italy	Grain–Oriented Electrical Steel (2nd Review)	David Goldberger (202) 482–4136

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding Sunset Reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of Sunset Reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet website at the following address: ''http://ia.ita.doc.gov/sunset/.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15–day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 24, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office for Import Administration.

[FR Doc. E6–1347 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–867]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Metal Calendar Slides from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a petition filed by Stuebing Automatic Machine

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Company (Petitioner), the U.S. Department of Commerce (the Department) initiated and is conducting an investigation of sales of metal calendar slides (MCS) from Japan for the period April 1, 2004 through March 31, 2005. *See Notice of Initiation of Antidumping Duty Investigation: Metal Calendar Slides from Japan*, 70 FR 43122 (July 26, 2005) (*Initiation Notice*). The Department preliminarily determines that MCS from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, Dara Iserson, or Kimberley Hunt, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0780, (202) 482–4052, or (202) 482–1272, respectively.

SUPPLEMENTARY INFORMATION:

Case History

This investigation was initiated on July 19, 2005. *See Initiation Notice*. Since the initiation of the investigation, the following events have occurred. On August 3, 2005, the Department issued a letter providing interested parties an opportunity to comment on a proposed set of model–match criteria. We received comments in response to this letter from Petitioner and Nishiyama Kinzoku Co., Ltd. (Nishiyama). on August 17, 2005. Based on these submissions, we determined the appropriate model–match characteristics. *See* Memorandum to Maria MacKay through Thomas Gilgunn, ''Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire'' (September 26, 2005).

On August 11, 2005, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. *See Metal Calendar Slides from Japan*, 70 FR 48778 (August 19, 2005) (*ITC Preliminary Determination*).

On September 21, 2005, the Department selected Nishiyama Kinzoku Co., Ltd. (Nishiyama) as the sole respondent in this investigation. *See Respondent Selection* section below. The Department issued its section A of the questionnaire to Nishiyama on September 21, 2005 and sections B–D on September 27, 2005.[1] Nishiyama submitted its response to section A on October 28, 2005, and its response to sections B and C on November 14, 2005. The Department issued a supplemental questionnaire to Nishiyama on December 7, 2005. We received the supplemental response for sections A–C on December 27, 2005. Nishiyama submitted its section D response on December 30, 2005.

On November 2, 2005, Nishiyama notified the Department of its intention to use its fiscal year (FY) (calendar year 2004), rather than the period of investigation (POI), as the basis for reporting variable manufacturing cost and total manufacturing cost in its November 14, 2005 sections B and C responses. Petitioner commented on this cost reporting period shift in its November 25, 2005 submission. On November 28, 2005, the Department requested additional information from Nishiyama in order to determine the appropriateness of its use of its FY costs. Based on our analysis of Nishiyama's December 12, 2005 response, we allowed the shift because there were no significant cost differences between the periods. *See* Letter from Barbara E. Tillman to Nishiyama, ''Antidumping Duty Investigation of Metal Calendar Slides from Japan'' (December 27, 2005).

On November 10, 2005, Petitioner requested that the Department extend the preliminary determination in this investigation from December 6, 2005 to January 25, 2006. We postponed the preliminary determination to January 25, 2006, under section 733(c)(1) of the Act. *See Notice of Postponement of Preliminary Determination in the Antidumping Duty Investigation of Metal Calendar Slides from Japan*, 70 FR 70059 (November 21, 2005).

On January 19, 2006, Petitioner submitted comments regarding the preliminary determination. Due to the statutory deadline governing this investigation, we were unable to fully analyze these comments for the purposes of the preliminary determination. If necessary, the Department will issue an additional supplemental questionnaire to clarify issues raised by Petitioner.

Although critical circumstances were not alleged in the petition, Petitioner maintained that there is a reasonable basis to believe or suspect that critical circumstances will exist with regard to imports of MCS from Japan. *See Petition for Imposition of Antidumping Duties on Metal Calendar Slides from Japan* (June 29, 2005) (*Petition*). In the *Petition*, Petitioner requested that the Department monitor imports of MCS pursuant to section 351.206(g) of the Department's regulations. In the *Initiation Notice*, the Department stated that it would monitor imports of MCS from Japan and would request that U.S. Customs and Border Protection (CBP) compile information on an expedited basis regarding entries of the subject merchandise. *Initiation Notice*, 70 FR at 43124.

The Department has obtained CBP data covering entries of subject merchandise from January 1, 2003, through October 31, 2005. We placed this data on the record on January 10, 2006. *See* Memorandum to the File from Dara Iserson, ''Antidumping Duty Investigation of Metal Calendar Slides from Japan: The Placing of U.S. Bureau of Customs and Border Protection IM–115 Data on the Record'' (January 10, 2006). In addition, Nishiyama submitted to the Department the volume and value of its monthly shipments to the United States for the period 2003 through 2005. On January 19, 2006, Petitioner alleged critical circumstances. Pursuant to section 351.206(c)(2)(ii) of the Department's regulations, the Department will issue its preliminary finding with respect to critical circumstances within 30 days of Petitioner's allegation.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. In the Petition, Petitioners identified five potential producers and exporters of MCS in Japan: Nishiyama, BSI Corp., Sanko Shoji KK, Taiyo Shoko KK, and KK Shino Kanagu. On August 5, 2005, the Department sent a cable to the U.S. Embassy in Tokyo, Japan requesting information about the potential producers/exporters of MCS. *See* Memorandum to the File from Dara Iserson, ''Metal Calendar Slides from

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation.

Japan - Mini Quantity and Value Questionnaire Responses and Respondent Selection'' (September 21, 2005) (placing the cable to the embassy on the record) (*Mini Q&V Memorandum*). The Embassy's August 9, 2005, reply confirmed that Nishiyama produced MCS and exported MCS to the United States. In addition, Sanko Shoji KK, Taiyo Shoko KK, and KK Shino Kanagu each informed the U.S. Embassy that they produce MCS and distribute them in the Japanese market, but do not directly export MCS to the United States. Finally, the U.S. Embassy stated that it was unable to obtain any information regarding BSI Corp.

On August 18, 2005, the Department sent Nishiyama, BSI Corp., Sanko Shoji KK, Taiyo Shoko KK, and KK Shino Kanagu letters requesting information on the total quantity and value of MCS that each produced and/or exported to the United States during the POI. We also requested that, if the company did not produce the product, it provide the Department with the total quantity and value of subject merchandise that it exported to the United States during the POI. On August 26, 2005, we received a response from BSI Corp. certifying that it neither produced nor exported subject merchandise to the United States during the POI. On August 31, 2005, we received a response from Nishiyama certifying the amount of in–scope merchandise it produced in Japan and exported to the United States during the POI. On September 7, 2005, we received a response from Sanko Shoji KK, certifying that it has never made shipments of MCS to the United States and that it has only made sales in its home market. To date, the Department has not received a response from Taiyo Shoko KK or KK Shino Kanagu.

Based on our analysis of the information collected by the U.S. Embassy and the information provided in responses to the letters requesting quantity and value information, we determined that Nishiyama was the only known exporter of metal calendar slides to the United States. *See Mini Q&V Memorandum*. Therefore, Nishiyama is the sole respondent in this investigation and the Department has calculated an individual dumping margin for the company. See section 777A(c)(2)(B) of the Act. *See Mini Q&V Memorandum* (providing the complete analysis of the respondent selection).

Period of Investigation

The POI is April 1, 2004 through March 31, 2005. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the Petition (*i.e.*, June 2005) involving imports from a market economy, and is in accordance with the Department's regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For the purpose of this investigation, the product covered is MCS. The products covered in this investigation are ''V'' and/or ''U'' shaped MCS manufactured from cold–rolled steel sheets, whether or not left in black form, tin plated or finished as tin free steel (TFS), typically with a thickness from 0.19 mm to 0.23 mm, typically in lengths from 152 mm to 915 mm, typically in widths from 12 mm to 29 mm when the slide is lying flat and before the angle is pressed into the slide (although they are not typically shipped in this ''flat'' form), that are typically either primed to protect the outside of the slide against oxidization or coated with a colored enamel or lacquer for decorative purposes, whether or not stacked, and excluding paper and plastic slides. MCS are typically provided with either a plastic attached hanger or eyelet to hang and bind calendars, posters, maps or charts, or the hanger can be stamped from the metal body of the slide itself. These MCS are believed to be classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7326.90.1000 (Other articles of iron and steel: Forged or stamped; but not further worked: Other: Of tinplate). This HTSUS number is provided for convenience and U.S. Customs and Border Protection purposes. The written description of the scope of this investigation is dispositive.

Date of Sale

Nishiyama reported invoice date as the date of sale for both the home and U.S. markets. Nishiyama maintains that it makes no contract sales in either market. As such, Nishiyama maintains that its invoice, issued at the time of shipment, is the first document that establishes the price and quantity of the sale. Nishiyama contends that although its home market and U.S. customers issue purchase orders, the terms of sale including the quantity and price may change at any point up to the time of shipment. Nishiyama submitted documentation for home market and U.S. sales for which the terms of sale shown on the invoices differed from the terms of sale on the purchase orders. Because the material terms of sale are established when the invoice is issued, and because of our presumption that invoice date is the date of sale, as stated in section 351.401(i) of the Department's regulations, we are using invoice date as the date of sale for all of Nishiyama's sales in both markets.

Cost Reporting Period

As noted above, on November 2, 2005, Nishiyama notified the Department that it intended to report its total cost of manufacturing and variable cost of manufacturing for its November 14, 2005 section B and C responses based on the company's FY rather than the POI. On November 28, 2005, the Department issued a cost period shift questionnaire. Based on our analysis of Nishiyama's December 12, 2005 response, we allowed the shift, because there were no significant cost differences between the two periods. See Letter to Nishiyama, Re: ''Antidumping Investigation of Metal Calendar Slides from Japan'' (December 27, 2005).

Fair Value Comparisons

To determine whether sales of MCS to the United States were made at LTFV, we compared export price (EP) to normal value (NV), as described in the ''U.S. Price'' and ''Normal Value'' sections below.

U.S. Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States . . . ,'' as adjusted under subsection (c). For purposes of this investigation, Nishiyama classified all of its U.S. sales as EP sales. Nishiyama has reported that it sold and shipped the subject merchandise directly to unaffiliated customers in the U.S. market and that it did not make any U.S. sales through an affiliated U.S. importer. Therefore, we preliminarily determine that Nishiyama's transactions were EP sales.

We calculated the EP in accordance with section 772(a) of the Act. We based EP price on Nishiyama's Cost and Freight (C&F) price to its unaffiliated U.S. customers. We then made appropriate deductions for foreign inland freight, domestic brokerage, and international freight pursuant to section 772(c) of the Act.

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs the Department to calculate NV based on the price at which the foreign like product is first sold in the home market,

provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), and that there is no particular market situation that prevents a proper comparison with the EP. Under the statute, the Department will normally consider quantity (or value) insufficient if it is less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. *See* Section 773(a)(1)(C) of the Act. We found that Nishiyama had a viable home market for MCS. As such, Nishiyama submitted its home market sales data for the calculation of NV. In deriving NV, we made adjustments as detailed in the ''Calculation of Normal Value Based on Home Market Prices'' section below.

C. Cost of Production Analysis

On December 2, 2005, Petitioner alleged that Nishiyama made sales in the home market at less than the cost of production (COP). Based on these allegations, and in accordance with section 773(b)(2)(A)(I) of the Act, we found reasonable grounds to believe or suspect that MCS sales were made in Japan at prices below the COP. *See* Memorandum from the Team to Barbara E. Tillman, ''Petitioner's Allegation of Sales Below the Cost of Production for Nishiyama Kinzoku Co., Ltd. (Nishiyama)'' (December 14, 2005). As a result, the Department is conducting an investigation to determine whether Nishiyama made home market sales of MCS at prices below COP during the POI within the meaning of section 773(b) of the Act.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market selling, general, and administrative (SG&A) expenses, including interest expenses and packing expenses. We relied on the COP data submitted by Nishiyama in its cost questionnaire responses, except as noted below:

- we revised Nishiyama's reported financial expense rate to include certain exchange losses;
- we revised the reported cost of goods sold denominator used to calculate both the G&A and financial expense rates to account for the ending finished goods inventory, and to deduct certain selling expenses, and packing costs.

For further details regarding these adjustments, see Memorandum from Ernest Gzyrian to the File, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Nishiyama Kinzoku, Co., Ltd.'' (January 25, 2005) (*COP Memo*).

2. Test of Home Market Sales Prices

We compared the weighted–average COP for Nishiyama to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model–specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below–cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that more than 20 percent of Nishiyama's home market sales of a given product during the POI were at prices below the COP, and in addition, the below–cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Home Market Prices

We calculated NV based on ex–works, ''free on board,'' or delivered prices to home market customers. We recalculated the starting price taking into account, where appropriate, billing adjustments and rebates in accordance with section 773(a)(6)(B)(iii) of the Act. In accordance with 19 CFR 351.401(c), we added other revenue (*e.g.*, inland freight revenue), where applicable. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions from the starting price for inland freight, when appropriate. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted home market packing, respectively. In accordance with section 773(a)(6)(iii) of the Act and 19 CFR 351.410(c–d), we made circumstances of sale adjustments for direct selling expenses, bank charges, and credit expenses.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, (*i.e.*, commission offset). Specifically, where commissions were incurred in the U.S. market, but not in the home market, we limited the amount of the commission offset to the lesser of indirect selling expenses (including inventory carrying cost) incurred in the home market or the commissions paid in the U.S. market.

F. Level of Trade

In accordance with section 773(a)(1)(B)(I) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same LOT as U.S. sales. *See* 19 CFR 351.412. The NV LOT is the level of the starting–price sale in the home market. For EP, the U.S. LOT is based on the starting price, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the home market. If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the current investigation, Nishiyama claimed two levels of trade in the home market and a single separate level of trade in the U.S. market. In addition, Nishiyama requested an LOT adjustment. Nishiyama maintains that its HM ''LOT 1'' sales are made to large calendar manufacturers who provide estimates of projected MCS purchases for the entire year. Nishiyama maintains that these estimates eliminate the need for the

extensive coordination between sales and production that is required on ''order by order'' sales and enables Nishiyama to produce MCS during the non–peak season. Nishiyama contends that the ''LOT 2'' sales are made to small calendar manufacturers that do not provide estimates to Nishiyama, rather, Nishiyama produces MCS for these customers on an ''order by order'' basis. Nishiyama maintains that there is a shorter production lead time for this type of customer. Nishiyama also maintains that it has to make significant additional efforts to coordinate sales and production due to the shorter delivery schedules, smaller orders, and level of customization. Nishiyama claims that the U.S. sales more closely correspond to ''LOT 1'' because the U.S. customers place orders with longer lead times and do not require significant time for coordination with the customer.

In our original questionnaire and our supplemental questionnaire, we asked Nishiyama to provide a complete list of all the selling activities performed and services offered in the U.S. market and the home market for each claimed LOT. Pursuant to 19 CFR 351.412(c)(2), substantial differences in selling activities are a necessary condition for determining there is a difference in the stage of marketing. While Nishiyama claimed that there were some differences between these distribution channels, which it claimed constitute separate LOTs, we find that these differences are not differences in selling functions and do not create two LOTs. Information submitted by Nishiyama with respect to its claimed LOTs primarily focused on the differences in the lead times for the order, the size of the manufacturers making the orders, and the amount of coordination needed when dealing with large versus small manufacturers. Nishiyama did not submit any information on the specific selling activities and functions for each proposed LOT nor did it define the stages of marketing of each proposed LOT. Nishiyama has not demonstrated substantial differences in the selling activities in the U.S. market and home market. As such, Nishiyama has not adequately supported its claim that it has two LOTs in the home market and a different, separate LOT in the U.S. market, or that we should grant it an LOT adjustment.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we will verify the questionnaire responses of Nishiyama before making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of MCS from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted–average dumping margins are as follows:

Producer/Exporter	Weighted–Average Margin (Percentage)
Nishiyama Kinzoku Co., Ltd.	7.68%
All Others	7.68%

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties, the calculations performed in this preliminary determination within five days of the date of the public announcement.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs either 50 days after the date of publication of this notice or ten days after the issuance of the verification reports, whichever is later. *See* 19 CFR 351.309(c)(1)(I). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). Unless the Department receives a request for a postponement pursuant to section 735(a)(2) of the Act, the Department will make its final determination no later than 75 days after the date of this preliminary determination. *See* section 735(a)(1) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of MCS from Japan are materially injuring, or threatening material injury to, the U.S. industry. *See* section 735(b)(2) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: January 25, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–1348 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Tortugas Access Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 3, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Bizot, 301–713–7268 or *David.Bizot@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to gain access to the Tortugas ecological reserve, persons must obtain a permit. The permit holders must notify NOAA by radio no less than 30 minutes and no more than 6 hours before entering the reserve, and when leaving it. Permit actions may be appealed.

The purpose of the access permit and notifications are to (1) protect this unique deepwater coral reef and (2) facilitate the enforcement of the no-take regulations in this remote area. The overall intended effect of this collection is to protect the deepwater coral reef community in this area from being degraded by human activities.

II. Method of Collection

Applications and notifications are made by phone. Appeals must be in writing.

III. Data

OMB Number: 0648–0418.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses and other for-profit organizations; individuals or households; not-for-profit institutions; State, Local, or Tribal Government.

Estimated Number of Respondents: 49.

Estimated Time Per Response: 10 minutes for an application; 2 minutes for a radio call; and 90 minutes for an appeal.

Estimated Total Annual Burden Hours: 12.

Estimated Total Annual Cost to Public: $127.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–1299 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012506B]

Marine Fisheries Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of open public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC). This will be the first of two meetings held in fiscal year 2006 to review and advise NOAA on management policies for living marine resources. Agenda topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice. All sessions will be open to the public.

DATES: The meetings will be held February 14–15, 2006, from 9 a.m. to 5 p.m. and February 16, 2006, from 9 a.m. to 12 p.m.

ADDRESSES: The meetings will be held at the International Game Fish Association, 300 Gulf Stream Way, Dania Beach, FL 33004.

Requests for special accommodations may be directed to MAFAC, Office of Constituent Services, National Marine Fisheries Service, 1315 East-West Highway #9508, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, MAFAC Executive Director; telephone: (301) 713–2379 x171.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of meetings of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This committee advises and reviews the adequacy of living marine resource policies and programs to meet the needs of commercial and recreational fisheries, and environmental, state, consumer, academic, tribal, governmental and other national interests.

Matters to be Considered

February 14, 2006

The meeting will begin with remarks from Roy Crabtree, Southeast Regional Administrator for NMFS, and William T. Hogarth, Assistant Administrator for Fisheries. Next, the committee will receive an update on offshore aquaculture. There will also be a discussion of NMFS' role in seafood health and safety issues. The afternoon will include updates on international affairs and hurricane impacts and recovery in the Gulf of Mexico.

February 15, 2006

In the morning, the committee will be given an update on the status of litigation and briefed on Magnuson-Stevens Fishery Conservation and Management Act reauthorization. There will also be a discussion of overfishing. In the afternoon, the committee will discuss recreational fishing issues. Discussions on recreational fishing and seafood health may continue in two separate breakout groups.

February 16, 2006

The committee will reconvene to receive and discuss any breakout group reports. The rest of the morning will be devoted to administrative issues, such as the assignment of new members to subcommittees, determining the dates and locations of future meetings, and identifying follow-up assignments.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Laurel Bryant, MAFAC Executive Director; telephone: (301) 713–2379 x171.

Dated: January 27, 2006.

Gordon J. Helm,

Acting Director, Office of Constituent Services, National Marine Fisheries Service.

[FR Doc. E6–1336 Filed 1–31–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to the National Center for Composite Systems Technology

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.,* the Department of the Army hereby gives notice of its intent to grant to The National Center for Composite Systems Technology, a corporation having its principle place of business at 2000 Composite Drive, Kettering, OH 45420, an exclusive relative to U.S. Army Research Laboratory (ARL) patent US 6,881,374 entitled, ''Apparatus for Induction Lamination of Electrically Conductive Fiber-Reinforced Thermoplastic''; April 19, 2005, Gerhard *et al.*

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than 15 days from the date of this notice.

ADDRESSES: Send written objections to Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRD–ARL–DP–T/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, telephone (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–932 Filed 1–31–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Proposed Halligan-Seaman Water Management Project in Northeastern Colorado

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE) is preparing an Environmental Impact Statement (EIS) to analyze the direct, indirect and cumulative effects of two water supply projects being proposed collectively as the Halligan-Seaman Water Management Project. Construction of the proposed Project(s) will result in temporary and permanent impacts to jurisdictional waters of the United States, thereby requiring Clean Water Act Section 404 permits. The Cities of Fort Collins and Greeley (Cities), and six other water providers (Participants), have proposed the Project(s) to provide drought protection of existing and future water demands, more efficiency in managing Participants' existing or future water rights, some operational redundancy, and possibly environmental benefits. Construction of the proposed Project(s) involves enlargement of two existing reservoirs: Halligan Reservoir and Milton Seamen Reservoir (Seaman Reservoir), resulting in approximately 88,592 acre-feet of additional storage capacity in the Cache la Poudre River Basin. The Halligan-Seaman Water Management Project would be a non-federal project constructed, owned and operated by the Cities and/or Participants.

DATES: Scoping meetings will be held:

1. February 23, 2006, 4 to 8 p.m., Livermore, CO.
2. February 27, 2006, 4 to 8 p.m., Fort Collins, CO.
3. February 28, 2006, 4 to 8 p.m., Greeley, CO.

ADDRESSES: The scoping meeting locations are:

1. February 23, 2006, at The Livermore Community Church, 160 Red Feather Lakes, Livermore, CO.
2. February 27, 2006, at the Lincoln Center, Canyon Room, 417 West Magnolia Street, Fort Collins, CO.
3. February 28, 2006, at the Bunk House at Island Grove, 501 North 14th Avenue, Greeley, CO.

FOR FURTHER INFORMATION CONTACT: Questions and comments regarding the proposed action and EIS should be addressed to Chandler Peter, Project Manager, U.S. Army Corps of Engineers, 2232 Dell Range Blvd., Suite 210, Cheyenne, WY 82009; (307) 772–2300 *chandler.j.peter@usace.army.mil.* For special needs (visual or hearing impaired, Spanish Translator, etc.) requests during scoping meetings, please call Chandler Peter by February 15, 2006.

SUPPLEMENTARY INFORMATION: The COE will be conducting public scoping meetings at three locations (See **DATES** and **ADDRESSES**) to describe the Project(s), the NEPA compliance process, and to solicit input on the issues and alternatives to be evaluated, and other related matters. Written comments for scoping will be accepted, until March 17, 2006. The COE has prepared a Scoping Document to familiarize other agencies, the public and interested organizations with the proposed Project(s) and potential environmental issues that may be involved. Copies of the Scoping Document will be available at the public Scoping Meetings or can be requested by mail.

The Participants are composed of water providers in the region and include three water districts collectively known as the Tri-District including North Weld County Water District, Fort Collins-Loveland Water District, and East Larimer County Water District, the City of Evans, the North Poudre Irrigation Company, and the Water Supply and Storage Company.

The Cities have proposed a preferred configuration of the Project(s) which involves the construction of new, larger dams immediately downstream of the existing Halligan and Seaman dams. Water stored in the expanded reservoirs will address needs associated with municipal and industrial water demands as well as some agricultural demands. Preliminary analyses by the Cities indicate that the enlarged reservoirs will fill primarily during the summer and fall months from North Fork Poudre River flows. Seaman Reservoir will also fill via a pump station on the Poudre River mainstem near the dam site. Small releases are proposed throughout the year on a periodic basis to maximize operational efficiency. The cities anticipate that both reservoirs are expected to remain mostly full except during drought periods.

The EIS will be prepared according to the COE's procedures for implementing the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4332(2)(c), and consistent with the COE's policy to facilitate public understanding and review of agency

proposals. As part of the EIS process, a full range of reasonable alternatives include the proposed Project and no action will be evaluated.

The COE has invited the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the U.S. Forest Service, Colorado Division of Wildlife, Larimer County, and Weld County to be cooperating agencies in the formulation of the EIS.

Chandler J. Peter,

Project Manager, Regulatory Branch.

[FR Doc. 06–933 Filed 1–31–06; 8:45 am]

BILLING CODE 3710–62–M

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** material changes to the HAVA State plan previously submitted by West Virginia.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plan published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. EAC has not previously published an update to the West Virginia State plan in the **Federal Register**.

The submission from West Virginia addresses material changes in the administration of its previously submitted State plan and, in accordance with HAVA section 254(a)(12), provides information on how the State succeeded in carrying out the previous State plan. The current submission from West Virginia addresses a material change to the attachments of their previously submitted State plan, including a Request for Proposal to explain the voting system vendor selection process. The amendment also includes the State Rules passed by the West Virginia State Legislature in relation to the loan fund provided by the State Election Commission for the purchase of voting equipment, software and services by counties.

Upon the expiration of thirty days from February 1, 2006, West Virginia will be eligible to implement the material changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC notes that the plan published herein has already met the notice and comment requirements of HAVA section 256, as required by HAVA section 254(a)(11)(B). EAC wishes to acknowledge the effort that went into revising the State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Officials

West Virginia

The Honorable Betty Ireland, Secretary of State, Bldg. 1, Suite 157–K, 1900 Kanawha Blvd., East Charleston, WV 25305–0770, Phone: 866–SOS–VOTE, Fax: 304–558–0900, E-mail: *elections@wvsos.com.*

Thank you for your interest in improving the voting process in America.

Dated: January 6, 2006.

Paul S. DeGregorio,

Chairman, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

December 8, 2005

The Honorable Gracia Hillman, Chairman
United States Election Assistance Commission
1225 New York Avenue NW Suite 1100
Washington DC 20005

Dear Chairman Hillman:

In accordance with Section 255 of the Help America Vote Act of 2002 (HAVA), I am enclosing for publication in the Federal Register additional attachments for the West Virginia HAVA State Plan. These attachments offer a more detailed explanation of the original plan offered. Included you will find a copy of the Request for Proposal West Virginia utilized in selecting the appropriate vendor that will complete West Virginia's compliance with HAVA Section 301. Also attached are the State Rules as passed by the West Virginia Legislature in relation to the loan fund provided by the West Virginia State Election Commission. The fund will provide monies for future improvements in voting system technology.

I have submitted only the attachments because no portion of the State Plan has been amended. After consultation with Election Assistance Commission staff, I have elected not to forward the entire State Plan for publication. To view the full plan with the attachments, EAC staff members, as well as the general public can visit the West Virginia Secretary of State website at www.wvsos.com.

Even though the State Plan was not amended and the attachments only further enhance the description of the plan, our office submitted the attachments for public comment in the West Virginia State Register from August 19, 2005 to September 15, 2005. As no comments were received, this information is immediately available for further publication. To complete the requirements found under Section 254(a)(12) of HAVA, I am also to report how West Virginia has made progress in carrying out the State Plan. Through the participation of many interested parties, the West Virginia Secretary of State's Office, in conjunction with the West Virginia State Legislature and the West Virginia State Election Commission, has accomplished the following items:

1. **Voting Systems Standards Requirements. (Section 301(a))**

West Virginia has received proposals from recognized voting systems vendors and has evaluated the proposals and selected the Direct Recording

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Telephone: 304-558-6000 • Toll Free: 866-SOS-VOTE • Corporations: 304-558-8000 • Fraud Hotline: 877-FRAUD-WV • Fax: 304-558-0900 • www.wvsos.com

Electronic (DRE) for each county. This action meets the disability access provisions of Title III. Each polling place in each county will receive the appropriate DRE system. The installation of these systems will meet HAVA timelines.

2. **Voting Systems Used in Each County.**

Voting systems used by counties in West Virginia have been realigned so that currently:

Eighteen counties have chosen to use the ES&S Optical Scan Voting System in addition to the one accessible ES&S iVotronic Touchscreen System with the Real Time Audit Log per precinct.

Three counties have chosen to use the ES&S Optical Scan Voting System in additional to one accessible ES&S AutoMARK per precinct.

Thirty-two counties have chosen to use the ES&S iVotronic Touchscreen Systems with the Real Time Audit Log for the only voting system.

Two counties have chosen to use a paper ballot system in additional to the one accessible ES&S iVotronic Touchscreen System with the Real Time Audit Log per precinct.

In addition, those counties that will be using optical scan and paper ballots for the primary voting system of the county will also participate in a massive voter education program aimed at educating voters on over voting.

3. **Legal Vote for Each Type of Voting System Used in the State. (Section 301(a))**

West Virginia has make a great effort to provide county clerks with clear instructions on voter intent. West Virginia law outlines that a voter's intent is priority when tabulating election results. Procedures currently in place enhance what is required in code and provides county clerks with specific instructions on a variety of issues regarding legally cast ballots in the state.

Chairman Hillman
December 8, 2005
Page Three

4. **Provisional Voting. (Section 302)**

West Virginia has provided provisional voting for many years. Our provisional voting fully complies with HAVA. The voter may cast a provisional ballot, complete a certificate, the voter's residency requirement, and then receives a provisional balloting description and explanation. This information is also posted at the polling place door, in the voting booth and on the Secretary of State's website. Each county maintains a full record of provisional ballot voting and action taken by the canvassing board.

This information is available to the provisional voter. Calls to a voter's county election office and to the Secretary of State are toll free.

Provisional balloting supports provisional voting during any extended voting hours.

5. **Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail. (Section 303)**

West Virginia's statewide voter registration system was online in January of 2004. As technologies advance, upgrades to the system continue to evolve. Currently, each of West Virginia's 55 counties is online with the system. West Virginia has processed three statewide elections utilizing the new registration system with few problems. Further development will continue as comparisons are done with other state agencies and additional requirements are added through West Virginia state law.

The Voter Registration List is maintained on the uniform voter registration system implemented in 2003. The mail-in voter registration form has been redesigned to completely reflect information as required by HAVA. The 2003 Legislature also changed the voter verification process as required by HAVA.

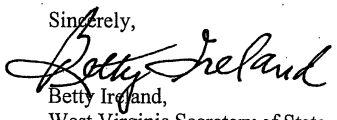
We were requested by staff members of the EAC to further explain the discrepancy in the amount discussed in our State Plan regarding encumbrances of the funds supplied to West Virginia through HAVA. The State Plan assumed an amount $330,100 short of the actual receipts under Title I and II. The additional amount will be utilized to further enhance the voting systems currently in use by each county within West Virginia, thus ensuring compliance that every precinct will have one accessible unit.

Chairman Hillman
December 8, 2005
Page Four

As West Virginia completes the final stages of implementation and becomes fully compliant with the Help America Vote Act, we look forward to continuing our work with the Elections Assistance Commission and the citizens of West Virginia to offer a fair, efficient, and successful election process.

Please contact me should you have further questions on this matter.

Sincerely,



Betty Ireland,
West Virginia Secretary of State

Enclosures

c: Jason Williams, Manager of the Elections Division

FILED
2005 JUN 29 A 8:30
OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 10
LOAN PROGRAM FOR PURCHASE OF VOTING EQUIPMENT, SOFTWARE AND SERVICES

§153-10-1. General.

1.1. Scope. – To establish guidelines for the administration of the loan program established by S.B. 3002 (2004).

1.2. Authority. – W. Va. Code §3-1-48.

1.3. Filing Date. – _____, 2005.

1.4. Effective Date. -- _____, 2005.

§153-10-2. Request for loan.

County commissions may request a loan from the Secretary of State for the purpose of obtaining, modifying or replacing voting equipment, software and necessary related services including voting systems, technology and methods for casting and counting votes.

§153-10-3. Application.

3.1. Any county commission requesting a loan, shall file an application with the Secretary of State.

3.2. The application shall be on a form provided by the Secretary of State and shall contain the following information:

3.2.a. Name of County

3.2.b. Amount of loan requested

3.2.c. Proposed use of funds including type of equipment, software and/or services and quantity, if applicable

3.2.d. Statement that county has obtained at least fifty percent (50%) of the cost of the equipment, software and/or service

3.2.e. Date of application

3.2.f. Signature of county commissioners

3.2.g. Such other information deemed necessary by the Secretary of State

3.3. In addition to the application, the county commission shall provide to the Secretary of State a copy of the resolution passed by the county commission authorizing the county to purchase or lease the equipment, software and/or services and to enter into the loan agreement.

§153-10-4. Matching Funds.

4.1 County commissions must obtain at least fifty percent (50%) of the cost of the equipment, software and/or services and may only obtain a loan for up to fifty percent (50%) of the cost.

4.2. The State Election Commission may waive a portion or all of the fifty percent matching funds required by a county commission if the county commission demonstrates to the satisfaction of the State Election Commission that it has exercised due diligence to raise the matching funds; it is unable to obtain the matching funds; and that it has the ability to pay the installments on the loan when due.

4.3. County commissions may request a waiver of the matching funds by filing an application with the State Election Commission.

4.4. The application for waiver of matching funds shall be on a form provided by the Secretary of State and it shall include the following information:

4.4.a. Name of county

4.4.b. Amount that county commission has raised toward the matching fund

4.4.c. Amount of waiver requested

4.4.d. An explanation of the efforts of the county commission to raise the entire matching funds

4.4.e. Full financial disclosure of the assets and liabilities of the county

4.4.f. Potential for future income and its ability to pay the installments on the loan when due

4.4.g. Date of application

4.4.h. Signature of county commissioners

4.4.i. Such other information deemed necessary by the Secretary of State

§153-10-5. Authorized Equipment, Software and Services.

Loans may only be approved by the State Election Commission for the purchase or lease of equipment, software and/or services if certified by the State Election Commission if applicable, and if authorized by the Secretary of State under a contract awarded through the state purchasing procedure.

§153-10-6. Ownership.

All equipment, software and services acquired through this loan program shall be purchased by the Secretary of State from the vendor under the contracted referred to in section 5 of this rule and shall be immediately turned over to the county and the equipment shall be solely owned by the county.

§153-10-7. Approval.

7.1. Upon receipt of a complete application for a loan or application for a waiver of the matching funds, the State Election Commission shall review and approve the application, deny the application or request additional information within forty-five days of receipt. Any denial shall include a letter setting forth the reason(s) for the denial. Any county commission receiving a denial shall have thirty days to amend its original application in order to comply with any necessary changes required by the State Election Commission.

7.2. Once a county commission has met all of the requirements of this rule, the State Election Commission shall approve the loan; provided that funds are available.

7.3. Upon approval, the county commission and the State Election Commission shall enter into a contract for the repayment of the loan by equal monthly or annual payments for a period not to exceed five years or the length of the contract to obtain the equipment, software and/or services, whichever is less.

7.4. Upon written request by the county commission, the State Election Commission may extend the repayment of the loan on a year-to-year basis for a repayment period not to exceed five additional years. Nothing in this section should be construed to allow loan continuation for a period of more than ten years total from the date of the signing of the agreement.

7.5. Unanimous approval shall be required by the State Election Commission when a county commission applies for a subsequent loan from this fund while such county commission currently has an outstanding loan from the fund.

§153-10-8. Maximum Amount of Loan Funds Available.

The maximum amount that any county may borrow from this fund under any one request, will be limited to a pro rata fraction of loan funds available at the time of the request, the numerator of the fraction shall be the number of registered voters in that county as of the most recently passed federal presidential election, and the denominator of the fraction shall be the total number of registered voters in the state as of the most recently passed federal presidential election; Provided, That, for the initial purchase or lease of an electronic voting system in order to meet the January 1, 2006 HAVA requirement, the provisions of this section shall not apply to those counties that meet the criteria of section 9 of this rule.

§153-10-9. Equipment Purchased or Leased Before November 13, 2004.

Any county commission that purchased or leased an electronic voting system prior to the thirteenth day of November, two thousand four, is eligible to apply for matching funds to upgrade or replace the system. Such matching funds shall not exceed the amount available to purchase a new electronic voting system under the Secretary of State's authorized contract.

§153-10-10. Replacement of Punch Card and Lever Voting Systems.

Any county commission that makes the choice after January 1, 2006 to replace its punch card or lever voting system, shall be eligible to borrow funds from this loan program for the purpose of replacing its voting system with a HAVA-compliant system; Provided that the maximum aggregate amount of loan proceeds that will be available to such counties under this loan program according to section 8 of this rule shall be reduced by the amount of federal funding that was forfeited and returned to the federal government as a result of such county's failure to replace its punch card or lever system by January 1, 2006.

§153-10-11. Repayment of Loans

11.1. No county commission may apply for and receive a loan if that county commission currently has an outstanding loan from this fund which is in default.

11.2. Upon nonpayment of the loan installments by the county commission or other breach of the loan agreement, the Secretary of State may institute a civil action, mandamus or other judicial or administrative proceeding to compel performance by the county commission.

11.3. Nonpayment of the loan installments shall mean a nonpayment of two consecutive monthly payments or nonpayment of an annual payment in excess of thirty days beyond the scheduled payment date.

11.4. Any legal action will cease upon full payment of the default amount by the county. The defaulting county commission shall be liable for any legal costs incurred by the Secretary of State in order to obtain compliance.

PROPOSED LEGISLATIVE RULE §153-10

Loan Program for Purchase of Voting Equipment, Software & Services

Brief Summary

This proposed rule is promulgated pursuant to SB 3002, 3rd Special Legislative Session, 2004.

It sets forth the requirements under which counties may borrow money at zero per cent interest from the "County Assistance Voting Equipment Fund", a special revenue revolving loan fund created in the state treasury, to purchase, maintain, or upgrade voting systems hardware and software, and also to procure various services required by the Help America Vote Act of 2002.

EMERGENCY RULE QUESTIONNAIRE

DATE: 6/29/2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (*Agency Name, Address & Phone No.*) Secretary of State
Building 1, Suite 157K
Charleston WV 25305 558-6000

EMERGENCY RULE TITLE: Loan Program for Purchase of Voting Equipment, Software & Services

1. Date of filing June 29, 2005

2. Statutory authority for promulgating emergency rule:

   §3-1-48

3. Date of filing of proposed legislative rule: June 29, 2005

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New Language from HB 2950

5. Has the same or similar emergency rule previously been filed and expired?

   No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Mandated by HB 2950 to file as emergency

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER: SOS36206

PAGE: 1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
RON PRICE
304-558-0492

VENDOR:
RFQ COPY
TYPE NAME/ADDRESS HERE

SHIP TO:
SECRETARY OF STATE

BUILDING 1, ROOM 157K
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV
25305-0770 558-6000

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
07/11/2005				

BID OPENING DATE: 08/01/2005 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		578-35		

VOTING SYSTEM UPGRADE

REQUEST FOR PROPOSAL

TO PROCURE THE SERVICES OF A VENDOR TO UPGRADE AND IMPROVE THE VOTING SYSTEMS CURRENTLY IN PLACE IN WEST VIRGINIA'S 55 COUNTIES PER THE ATTACHED SPECIFICATIONS.

THIS CONTRACT SHALL BE IN ACCORDANCE WITH THE PURCHASE ORDER AS ISSUED BY THE DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION, ANY ADDENDA, THE ORIGINAL RFP, AND THE RESPONSE TO THE RFP AS PREPARED BY THE SUCCESSFUL VENDOR.

AN OPTIONAL PRE-BID CONFERENCE WILL BE HELD ON 7/22/05 AT 10:00 AM AT THE SECRETARY OF STATE'S OFFICE, 1900 KANAWHA BOULEVARD, SUITE 157-K, CHARLESTON, WV 25305. ALL INTERESTED BIDDERS ARE ENCOURAGED TO ATTEND THE PRE-BID; HOWEVER, ATTENDANCE IS NOT MANDATORY. NO ONE PERSON MAY REPRESENT MORE THAN ONE VENDOR AT THIS MEETING.

LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON ..... AND EXTENDS UNTIL .....

BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.

SCANNED

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS
(REQUEST FOR QUOTATION) RFQ AND (REQUEST FOR PROPOSAL) RFP

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the ***West Virginia Code*** and the ***Legislative Rules*** of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required $45 fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the ***West Virginia Code.***
8. Vendor preference will be granted upon written request in accordance with the ***West Virginia Code.***
9. The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the ***Legislative Rules*** of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.
14. **HIPAA Business Associate Addendum** - The West Viginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (**http://www.state.wv.us/admin/purchase/vrc/hipaa.htm**) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR ü160.103) and will be disclosing Protected Health Information (45 CFR ü160.103) to the vendor.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **DUPLICATE BIDS:** All quotations must be delivered by the bidder to the respective offices listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

ORIGINAL SIGNED BID TO:

Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

DUPLICATE BID TO:

State Auditor's Office
Bid Observer
Building 1 Room W114
1900 Kanawha Boulevard, East
Charleston, WV 25305-0230

Rev. 10/04

State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER	PAGE
SOS36206	2

ADDRESS CORRESPONDENCE TO ATTENTION OF:
RON PRICE
304-558-0492

VENDOR
RFQ COPY
TYPE NAME/ADDRESS HERE

SHIP TO
SECRETARY OF STATE
BUILDING 1, ROOM 157K
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV
25305-0770 558-6000

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
07/11/2005				

BID OPENING DATE: 08/01/2005 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
	PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:					

	CONTACT PERSON (PLEASE PRINT CLEARLY):					

	****** THIS IS THE END OF RFQ SOS36206 ****** TOTAL:					

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS
(REQUEST FOR QUOTATION) RFQ AND (REQUEST FOR PROPOSAL) RFP

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the ***West Virginia Code*** and the ***Legislative Rules*** of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required $45 fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the ***West Virginia Code.***
8. Vendor preference will be granted upon written request in accordance with the ***West Virginia Code.***
9. The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the ***Legislative Rules*** of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.
14. **HIPAA Business Associate Addendum -** The West Viginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site **(http://www.state.wv.us/admin/purchase/vrc/hipaa.htm)** is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR ü160.103) and will be disclosing Protected Health Information (45 CFR ü160.103) to the vendor.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **DUPLICATE BIDS:** All quotations must be delivered by the bidder to the respective offices listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

ORIGINAL SIGNED BID TO:

Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

DUPLICATE BID TO:

State Auditor's Office
Bid Observer
Building 1 Room W114
1900 Kanawha Boulevard, East
Charleston, WV 25305-0230

Rev. 10/04

STATE OF WEST VIRGINIA
Secretary of State's Office
1900 Kanawha Blvd., E., Suite 157-K
Charleston, West Virginia 25305

Request for Proposals
RFP SOS36206
Date of Issue: July 11, 2005

Title and Purpose of RFP:

Voting System Upgrade and Improvements

The State of West Virginia has issued this Request for Proposal (RFP) to procure the services of a Vendor to upgrade and improve the voting systems currently in place in West Virginia's 55 counties.

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SECTION ONE
EXECUTIVE SUMMARY

1.01 Purpose of the RFP:
The West Virginia Secretary of State's Office (SOS) is soliciting proposals to procure the services of a Vendor to upgrade and improve the voting systems currently in place in West Virginia's 55 counties.

Instrumental in the undertaking of this activity was the passage of the Help America Vote Act of 2002 (HAVA) by Congress. HAVA provides voting system requirements as well as a large portion of the funding necessary for voting system upgrades. The voting system implemented shall comply with Title III of HAVA as well as West Virginia election statutes.

1.02 Project:
The mission or purpose of the project is to allow the State of West Virginia to select a Vendor to provide a statewide, unified voting system. All polling locations within West Virginia will have one unassisted access DRE, as well as booths for voters to use to mark optical scan ballots. Counties will have the option to install additional DRE devices. Approximately fifty (50) county courthouses within West Virginia will have one central count optical scan system, while the other five (5) are, or will be, DRE systems. The proposed voting system must provide software for the programming of the purchased voting devices and the accumulation of results, for both optical scan devices and DRE's, on a unified basis.

Under state law, all DRE's must produce a voter verifiable paper audit trail.

There may be a few large counties which opt to provide their own additional funding to purchase through this RFP enough DRE's to replace their current punch-card or lever systems for every polling place, in addition to the one unassisted access DRE per polling place. We estimate the number of additional DRE's that would be purchased under this contract to be 1,020, plus 2,021 unassisted DRE voting systems.

There are 2 (two) counties in West Virginia that currently already have in use DRE's as their county-wide system (Cabell County and Marion County). We have assumed that these two counties will use this RFP to upgrade these DRE's to HAVA and West Virginia state standards. The approximate total number of DRE's in these two counties is 480. At the time this RFP is being issued there are also approximately three additional counties evaluating the installation of DRE machines instead of optical scan devices. The approximate number of additional DRE's is 1,020 making a total of 1,500. This project also includes the installation of approximately 2,021 unassisted DRE voting systems.

We also intend to issue an additional RFP in the summer of 2005 for precinct-based optical scanners for those counties that want to provide the additional funds to purchase

such machines. That RFP will also include requests for voter booths and printing of paper ballots for optical scan systems.

West Virginia does not currently allow for precinct ballot counting; these machines would be used to scan for over votes in the optical scan systems.

1.03 RFP Format:
This RFP has (seven) 7 Sections and eight (8) Attachments.

SECTION TWO
STATE PURCHASING REQUIREMENTS

2.01 Inquiries:

Additional information inquiries regarding specifications of this RFP must be submitted in writing to the State Buyer with the exception of questions regarding proposal submission which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 2.14. All inquiries of specification clarification must be addressed to:

Ron Price, Buyer Supervisor
Purchasing Division
State of West Virginia
2019 Washington Street, East
P.O. Box 50130
Charleston, WV 25305-0130
Fax: (304) 558-4115

Absolutely NO contact shall be made by the Vendor with any member of the Evaluation Committee. Violation may result in rejection of the bid. The State Buyer named above is the sole contact for any and all inquiries after this RFP has been released.

2.02 Vendor Registration:
Vendors participating in this process should complete and file a ***Vendor Registration and Disclosure Statement*** (Form WV-1) and remit the registration fee. Vendor is not required to be a registered Vendor in order to submit a proposal, but the **successful bidder must** register and pay the fee prior to the award of an actual purchase order/contract.

2.03 Oral Statements and Commitments:
Vendor must clearly understand that any verbal representations made or assumed to be made during any oral discussions held between Vendor's representatives and any State personnel are **not** binding. Only the information issued in writing and added to the Request for Proposal specifications file by an official written addendum is binding.

2.04 Economy of Preparation:
Proposals should be prepared simply and economically, providing a straightforward, concise description of Vendor's abilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.

2.05 Labeling of RFP Sections:

2.05.1 *Mandatory Requirements:*
The mandatory sections included in Section 4 and 5 require a response, and they describe the minimum requirements requested in this RFP. Any specification or statement containing the word "**must**", "**shall**", or "**will**" are mandatory. The Vendor is required to meet the mandatory specifications in order to be eligible for consideration and to continue in the evaluation process. A simple "yes" or "no" response to these sections is not adequate. Failure to meet mandatory items shall result in disqualification of the Vendor's proposal and the evaluation process terminated for that Vendor. Decisions regarding compliance with the intent of any mandatory specification shall be at the sole discretion of the State.

2.05.2 Contract Terms and Conditions:
Sections 2.29 and 2.30 detail the contractual terms and conditions under which the State of West Virginia will enter into a contract.

2.05.3 Informational Sections:
All informational specifications do not require a response from the Vendor. They are intended to aid the Vendor in structuring an effective proposal capable of meeting the needs of the issuing Agency.

2.06 Proposal Format and Submission:

2.06.1 Vendors must complete a response to all mandatory specifications in order to be considered. Each proposal must be formatted as per the outline in Section 5 of this RFP. No other arrangement or distribution of the proposal information may be made by the bidder. Failure on the part of the bidder to respond to specific requirements detailed in the RFP may be basis for disqualification of the proposal. The State reserves the right to waive any informalities in the proposal format and minor irregularities.

2.06.2 State law requires that the original technical and cost proposal be submitted to the State and also, a primary copy of the technical and cost proposal must be submitted to the Bid Observer of the State Auditor's Office. Copies for the Auditor's Office must not be mailed in the same envelope or package as the State's. Each should be sent under separate cover to insure arrival at their designated locations prior to the bid opening. All copies must be submitted to the respective offices **prior** to the date and time stipulated in the RFP as the opening date. All bids will be date and time stamped in each office to verify official time and date of receipt.

2.06.3 Vendors mailing proposals should allow sufficient time for mail delivery to ensure timely arrival. Neither the Purchasing Division nor the Auditor's Office can waive or excuse late receipt of a proposal which is delayed and late for any reason according to West Virginia Code §5A-3-11. Any proposal received after the bid opening date and time will be immediately

disqualified in accordance with State law and the administrative rules and regulations.

Submit:	**Submit:**
One original technical and cost plus (10) convenience copies to:	One exact copy with technical and cost to:
Purchasing Division State of West Virginia 2019 Washington Street, East P.O. Box 50130 Charleston, WV 25305	Bid Observer's Office State Auditor's Office Building 1, Room W-114 1900 Kanawha Blvd., East Charleston, WV 25305

The outside of the envelope or package(s) should be clearly marked:

Buyer:	**Ron Price, Buyer Supervisor**
Req#:	**SOS36206**
Opening Date:	**August 1, 2005**
Opening Time:	**1:30 P. M.**

2.07 Best Value Purchasing Standard Format:
All Requests for Proposal shall follow the standard format defined by the Purchasing Division. This format addresses required areas and enables the Agency to modify the background and scope of work to meet its needs.

2.07.1 *Evaluation Criteria*: All evaluation criteria must be clearly defined in the specifications section and based on a 100 point total score. Based on a 100 point total, cost shall represent a 35 of the 100 total points in the criteria.

2.07.2 *Proposal Format and Content*: Proposals shall be requested and received in two distinct parts: Technical and Cost. The cost portion shall be sealed in a separate envelope and will not be opened initially.

2.07.3 *Proposal Submission*: West Virginia Code §5A-3-11, states ". . . all bidders submitting bid proposals to the Purchasing Division are required to submit an extra or duplicate copy to the State Auditor. Both copies must be received at the respective offices prior to the specified date and time of the bid opening."

2.07.4 *Technical Bid Opening*: The Purchasing Division and the State Auditor will open only the technical proposals on the date and time specified in the Request for Proposal. The Purchasing Division

representative will read aloud the names of those who responded to the solicitation to confirm receipt by the State Auditor, and to confirm that both original packages contained a separately sealed cost proposal.

2.07.5 *Technical Evaluation*: An Evaluation Committee from the SOS Office will review the technical proposals, assign appropriate points and make a final written consensus recommendation to the Purchasing Division Buyer. If the Buyer approves the committee's recommendation, the information will be forwarded to an internal review committee within the Purchasing Division.

2.07.6 *Cost Bid Opening*: Upon approval of the technical evaluation, the Purchasing Division Best Value Committee shall notify the State Auditor and schedule a time and date to publicly open and read aloud the cost proposals. The Agency and the Vendors shall be notified of this date.

2.07.7 *Cost Evaluation and Resident Vendor Preference*: The Evaluation Committee will review the cost proposals, assign appropriate points and make a final consensus recommendation to the Purchasing Division. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable. Resident Vendor Preference by West Virginia Code §5A-3-37, provides an opportunity for qualifying Vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. A certificate of application is used to request this preference. Generally, a West Virginia Vendor may be eligible for two 2.5% preference points in the evaluation process.

2.07.8 *Contract Approval and Award*: After the cost proposals have been opened, the evaluation committee performs its review and makes its recommendation based on the highest scoring Vendor to the Purchasing Division buyer.

Once approved by the buyer, the contract is signed in the Purchasing Division, forwarded to the Attorney General's Office for approval as to form, encumbered and mailed to the appropriate parties.

2.08 Rejection of Proposals:
The State shall select the best value solution according to the evaluation criteria. However, the State reserves the right to accept or reject any or all proposals, in part or in whole at its discretion. The State reserves the right to withdraw this RFP at any time and for any reason. Submission of, or receipt by the State, of proposals confers no rights upon the bidder nor obligates the State in any manner.

A contract based on this RFP and the Vendor's proposal, may or may not be awarded. Any contract resulting in an award from this RFP is not valid until properly approved and executed by the Purchasing Division and approved as to form by the Attorney General.

2.09 Incurring Costs:
The State and any of its employees or officers shall not be held liable for any expenses incurred by any bidder responding to this RFP for expenses to prepare, deliver the proposal, or to attend any pre-bid meeting or oral presentations.

2.10 Addenda:
If it becomes necessary to revise any part of this RFP, an official written addendum will be issued by the State to all bidders of record.

2.11 Independent Price Determination:
A proposal will not be considered for award if the price in the proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to prices with any competitor unless the proposal is submitted as a joint venture.

2.12 Price Quotations:
The price(s) quoted in the bidder's proposal will not be subject to any increase and will be considered firm for the life of the contract.

2.13 Public Record:
2.13.1 *Submissions are Public Record.*
All documents submitted to the State Purchasing Division related to purchase orders/contracts are considered public records. All bids, proposals, or offers submitted by bidders shall become public information and are available for inspection during normal official business hours in the Purchasing Division Records and Distribution center after the award is complete and documents have been microfilmed.

2.13.2 *Written Release of Information.*
All public information may be released with or without a Freedom of Information request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently the fees are $0.50/page, or a minimum of $10.00 per request which ever is greater.

2.13.3 *Risk of Disclosure.*
The only exemptions to disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, only trade secrets as submitted by a bidder are the only exemption to public disclosure. The submission of any information to the State by a Vendor puts the risk of disclosure on the Vendor. The State will make a

reasonable effort not to disclose information that is within the guidelines of §29B-1-4 and is properly labeled "proprietary information not for public disclosure". The State does not guarantee non-disclosure of any information to the public.

2.14 Proposed Schedule of Events:

Purchasing releases RFP	July 11, 2005
Vendors' Questions due to Purchasing	July 22, 2005
Optional Pre-Bid Conference	July 22, 2005
Response to Vendors' Questions in Addendum Form	July 26, 2005
Technical Bids Opening	August 1, 2005
Vendor Demonstrations	August 2 thru August 19, 2005
Cost Bids Opening	To be Determined
Estimated Date of Contract Award	Sept 12, 2005
Vendor provides Work Plan	October 1, 2005
Vendor delivers Voting Systems for Counties	Nov 1, 2005
Vendor completes Training for Counties	Dec 1, 2005
Onsite Testing of Voting Systems for Counties	Dec 1 thru Dec 31, 2005
Deadline for full implementation Statewide	January 1, 2006

2.15 Optional Pre-bid Conference:
An optional pre-bid conference shall be conducted on the date specified above at 10:00 a.m. Said conference will be held at the Secretary of State's Office, 1900 Kanawha Blvd., Suite 157-K, Charleston, West Virginia 25305. All interested bidders may attend, but are not required to be present at this meeting. No one person can represent more than one Vendor.

2.16 Bond Requirements:

a. A Bid Bond in the amount of $500,000 shall be submitted with the technical proposal. A cashiers or certified check may be submitted in lieu of the bid bond. Failure to include the bid bond or other acceptable bid surety with the technical proposal shall result in disqualification of the proposal.
b. A performance bond in the amount of $500,000 shall be submitted by the successful bidder prior to award.

2.17 No Debt Affidavit:
West Virginia Code §5A-3-10a (3) (d) requires that all bidders submit an affidavit regarding any debt owed to the State. The affidavit must be signed and submitted prior to award. It is preferred that the affidavit be submitted with the proposal.

2.18 Resident Vendor Preference:
West Virginia Code §5A-3-37 provides an opportunity for qualifying Vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia Code. A certificate of application is used to request this preference. Generally, a West Virginia Vendor may be eligible for two and one half percent (2.5%) preference points in the evaluation process. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

2.19 Agency location:
The Secretary of State's Office (Agency) is located at 1900 Kanawha Blvd., Suite 157-K, Charleston, West Virginia 25305.

2.20 Sub-contractors:
Sub-contractors may be used to perform work under this contract. If a Vendor intends to use Sub-contractors, the Vendor must identify in the proposal the names of the Sub-contractors and the portions of the work the Sub-contractors will perform.

The Vendor, as prime Vendor, will be required to assume responsibility for all contractual activities offered in their proposal whether or not the prime Vendor performs them. Further, the State will consider the prime Vendor to be the sole point of contact with regard to contractual matters, including but not limited to payment of any and all costs resulting from the anticipated contract. The prime Vendor is totally and solely responsible for adherence by any subcontractor to all provisions of the contract.

2.21 Joint Ventures:
Joint ventures will not be allowed.

2.22 Contract Type:
This contract is a firm fixed price contract.

2.23 F.O.B. Point:
All goods purchased through this contract will be F.O.B. final destination. Delivery of voting system hardware, software, peripherals, manuals and other items must be made to the county seat of each county that purchases those materials, or for whom those purchases are made. Proposed training for county officials and election officials should also be performed at the county seat. Some larger counties will have multiple training sessions before each election due to the number of election officials being trained. The Vendor's proposal may suggest alternative methods for training locations. The Vendor is responsible for removing all packing materials after the equipment has been delivered.

2.24 Contract Funding:
Approval or continuation of a contract resulting from this RFP is contingent upon continuing appropriation. The contract may be terminated by the State or modified by agreement of both parties in the event funding from federal, state, or other sources is not obtained and continued at sufficient levels.

2.25 Vendor Personnel:
The Project Director designated by the Secretary of State (SOS) must approve any change of the Vendor's project team members named in the proposal, in advance and in writing. Personnel changes that are not approved by the SOS may be grounds for the State to terminate the contract.

2.26 Right to Inspect Place of Business:
At reasonable times, the State may inspect those areas of the Vendor's place of business that are related to the performance of a contract. If the State makes such an inspection, the Vendor must provide reasonable assistance.

2.27 Inspection & Modification - Reimbursement for Unacceptable Deliverables:
The Vendor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the Project Director designated by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the Project Director determine that corrections or modifications are necessary in order to accomplish its intent; the Project Director may direct the Vendor to make such changes. The Vendor will not unreasonably withhold such changes.

Substantial failure of the Vendor to perform the contract may cause the State to terminate the contract. In this event, the State may require the Vendor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

2.28 Source Code Escrow:
Vendor must provide a sample escrow agreement with their proposal. At a minimum the agreement must:

a) Identify an escrow agent;
b) Provide the software source code for all voting system components in a minimum of two formats (one human readable and one machine readable) to the escrow agent;
c) Provide the software documentation to the escrow agent;
d) Contain a statement confirming that the State of West Virginia will, within seven (7) days of the occurrence of one of the following events, receive full access to the source code and unlimited rights to continue using and supporting the software at no cost to the State should the Vendor:
   i) Become insolvent; or
   ii) Make a general assignment for the benefit of creditors; or
   iii) File a voluntary petition of bankruptcy; or
   iv) Suffer or permit the appointment of a receiver for its business or assets, or
   v) Become subject to any proceeding of bankruptcy or insolvency law, whether foreign or domestic; or
   vi) Wind up or liquidate its business voluntarily or otherwise and the State has reason to believe that the Vendor will fail to meet future obligations; or
   vii) Discontinue support of the provided products or fail to support the products in accordance with its maintenance obligations and warranties.
e) Contain a statement agreeing to notify in writing the ITA that qualified the system, giving the State of West Virginia full access to "final build", records and test results related to the qualification tests at no charge to the State; and
f) Contain a statement agreeing that the escrow will stay in place throughout the contract and any subsequent option years, as well as warranty and post-warranty periods at no cost to the State.

The Vendor shall deliver the source code escrow package to the escrow agent, pursuant to the sample escrow agreement within thirty (30) days of contract award.

2.29 Special Terms and Conditions of Contract:
2.29.1 *Bid and Performance Bonds:*
a. A Bid Bond in the amount of $500,000 shall be submitted with the technical proposal. A cashiers or certified check may be submitted in lieu of the bid bond. Failure to include the bid bond or other acceptable bid surety with the technical proposal shall result in disqualification of the proposal.
b. A performance bond in the amount of $500,000 shall be submitted by the successful bidder prior to award.

2.29.2 *Insurance Requirements*:
None.

2.29.3 *License Requirements:*
None.

2.29.4 *Litigation Bond:*
None.

2.29.5 *No Debt Affidavit*:
West Virginia Code §5A-3-10a-(3) (d) requires that all Vendors submit an affidavit of debt which certifies that there are no outstanding obligations or debts owing the State of West Virginia. The Debt Affidavit is attached to this request for proposal which ***should*** be completed, signed and returned ***with*** the Vendor's proposal.

2.30 General Terms and Conditions of Contract:
By signing and submitting their proposal, the successful Vendor agrees to be bound by all the terms contained in this RFP.

2.30.1 *Conflict of Interest*:
Vendor affirms that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Vendor further covenants that in the performance of the contract, the Vendor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Agency.

2.30.2 *Prohibition Against Gratuities*:
Vendor warrants that it has not employed any company or person other than a bona fide employee working solely for the Vendor or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission,

percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract.

For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion, and/or to pursue any other remedies available under this contract or by law.

2.30.3 *Certifications Related to Lobbying*:
Vendor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit a disclosure form to report the lobbying.

Vendor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification will be a material representation of fact upon which reliance was placed when this contract was made and entered into.

2.30.4 *Vendor Relationship*:
The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees, agents and any subcontractors.

Vendor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this RFP and resulting contract. Neither the Vendor nor any employees or Vendors of the Vendor shall be deemed to be employees of the State for any purposes whatsoever.

Vendor shall be exclusively responsible for payment of employees, contractors and Sub-contractors for all wages and salaries, taxes, withholding payments,

penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans, including but not limited to Workers' Compensation and Social Security obligations, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including but not limited to the foregoing payments, withholdings, contributions, taxes, Social Security taxes and employer income tax returns.

The Vendor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

2.30.5 *Indemnification:*
The Vendor agrees to indemnify, defend and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any Subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or Subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; (3) Any failure of the Vendor, its officers, employees or Subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.

2.30.6 *Contract Provisions*:
After the successful Vendor is selected, a formal contract document will be executed between the State and the Vendor. In addition, the RFP and the Vendor's response will be included as part of the contract by reference. The order of precedence is the contract, the RFP and the Vendor's proposal in response to the RFP.

2.30.7 *Governing Law*:
This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws (Federal, State or Local Government) regulations.

2.30.8 *Compliance with Laws and Regulations*:
The Vendor shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

The Vendor shall pay any applicable sales, use, or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the Vendor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

2.30.9 *Term of Contract & Renewals*:
The State intends to enter into a contract for a period of five (5) years from contract award date.

Renewal Option
This contract may be renewed upon satisfactory completion of the initial contract term. Vendors are required to propose costs in the Cost Proposal for three (3) one (1) year option years to provide voting system maintenance and programming services. The State may elect to renew this contract annually by option year at its discretion under the same terms and conditions. This contract will not automatically renew. The State will provide written notice to the Vendor of its intent to renew this contract at least thirty (30) days before the scheduled contract expiration date.

Notice by Vendor of intent to terminate will not relieve Vendor of the obligation to continue to provide services pursuant to the terms of the contract.

2.30.10 *Contract Termination*:
The State may terminate any contract resulting from this RFP immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. The State shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, the State shall issue the Vendor an order to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may also be terminated upon mutual agreement of the parties with thirty (30) days prior notice.

2.30.11 *Changes*:
If changes to the original contract become necessary, a formal contract change order will be negotiated by the State, the Agency and the Vendor, to address changes to the terms and conditions, costs of work included under the contract. An approved contract change order is defined as one approved by the Purchasing Division and approved as to form by the West Virginia Attorney General's Office, encumbered and placed in the U.S. Mail prior to the effective date of such amendment. An approved contract change order is required

whenever the change affects the payment provision and/or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements.

As soon as possible after receipt of a written change request from the Agency, but in no event more than thirty (30) days thereafter, the Vendor shall determine if there is an impact on price with the change requested and provide the Agency a written statement identifying any price impact on the contract or to state that there is no impact. In the event that price will be impacted by the change, the Vendor shall, provide a description of the price increase or decrease involved in implementing the requested change.

NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.

2.30.12 *Invoices, Progress Payments, & Retainage*:

The table below illustrates the State's proposed payment structure for the Vendor-provided systems, equipment and services procured through this RFP. Payment schedule is based on Vendor's completion of and State's acceptance of deliverables.

Deliverable	Cost based on deliverable
• Validation of the State's Requirements • Installed, configured voting system with: o Statewide license for the entire voting system o System documentation – one complete set of user and technical documentation for all hardware and components required to operate each system for the SOS and each local county clerk, in both printed and in electronic format o Project Management/Oversight o Warranty Payment of the above stated deliverable will be contingent upon successful testing for compliance with the state's specified requirements.	60%
• Training and informational materials – Internet and Other	5%
• Complete Training	10%
• Election Administrative Support	15%

• Post warranty maintenance and support	10%

Vendor is required to identify points in the work plan at which compensation would be appropriate. Progress reports must be submitted to Agency with the invoice detailing progress completed or any deliverables identified to support the payment schedule above. Payment will be made only upon approval of acceptable progress or deliverables as documented in the Vendor's report. Invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services.

The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. Ten percent (10%) of all service and software invoices will be held and released thirty (30) days after the completion of the project.

2.30.13 *Liquidated Damages*:
According to West Virginia Code §5A-3-4(8), Vendor agrees that liquidated damages shall be imposed at the rate of $1,000 per day, with a five day grace period, for failure to provide deliverables, failure to meet mile stones identified to keep the project on target, or failure to meet specified deadlines. This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue to any other additional remedy to which the State or Agency may have legal cause for action including further damages against the Vendor.

2.30.14 *Record Retention (Access & Confidentiality)*:
Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records a minimum of five (5) years and make available all records to Agency personnel at Vendor's location during normal business hours upon written request by Agency within 10 days after receipt of the request.

Vendor shall have access to private and confidential data maintained by Agency to the extent required for Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Agency against any and all claims brought by any party attributed to actions of breech of confidentiality by the Vendor, subcontractor, or individuals permitted access by Vendor.

SECTION THREE
BACKGROUND INFORMATION

3.01
Background Information:

West Virginia:
According to the 2000 Census Bureau statistics, West Virginia has a total population of 1,808,344. The number of votes cast for the Governor's Office in 2004 was 744,433, just under 53% of the voting age population. West Virginia is divided into 55 counties and 1,996 precincts as of the 2004 general election. Those counties range in size from Wirt County, with a voting age population of 4,381, to Kanawha County with a voting age population of 157,435.

Elections in West Virginia are administered at the county level. The counties are served by both elected and appointed county election officials. Those officials are responsible to the Secretary of State for administering all aspects of election management within their respective counties. As the state's chief election official, the Secretary of State is elected and charged with the oversight of all elections, including administration of state election law, election official training, candidate filings, candidate certification, campaign finance and disclosure oversight, and compilation of election results.

Voting Equipment:
Currently, West Virginia has 28 counties using optical scan voting systems, 10 using hand-count paper ballot systems, 3 using lever machines, 12 counties using a punch-card system, and 2 using DRE systems. There are three counties considering implementing DRE systems as of the date of this request for proposal. However, this RFP does not obligate those counties to purchase DRE systems. This Request for Proposal is anticipated to result in the purchase of approximately 2,021 unassisted DRE systems with the potential for an additional 1,500 DRE systems. Based on the information provided in Appendix C, there are 1,966 precincts.

HAVA:
In response to the national debate over the accuracy and administration of Federal elections, President George W. Bush signed the Help America Vote Act of 2002 (HAVA) into law on October 29, 2002. The HAVA legislation not only provides requirements for technology, procedures and education, but also for the first time allocates Federal funds to assist the states with the implementation of those requirements.

West Virginia is well on its way towards the successful implementation of HAVA. In 2003, the State Legislature was very supportive of the changes required by HAVA and enacted legislation enabling the Secretary of State to develop and implement a State HAVA Plan in compliance with the federal provisions. Although West Virginia was not plagued by the problems experienced in other states, HAVA creates a unique

opportunity to proactively upgrade the election process, including a statewide voting system capable of best serving its citizens. The Secretary of State, Betty Ireland, is the chief election official in West Virginia.

State law authorizes the use of voting systems that will comply with the disability access requirements of HAVA. State law also authorizes the use of DRE's, as well as precinct-based scanners. Each polling location in West Virginia will be equipped with a voting system capable of allowing persons with disabilities (and others) to vote unassisted. Each polling place in West Virginia will be required to have the new voting system implemented by January 1, 2006.

Please refer to the West Virginia HAVA Plan for additional details on background and West Virginia's approach to this legislation. The plan may be found at http://www.wvsos.com

SECTION FOUR
SCOPE OF WORK AND QUALIFICATIONS

4.01 Scope of Work:

Overview:
The West Virginia Secretary of State's Office is soliciting proposals to procure the services of a Vendor capable of providing optical scan and unassisted access voting systems for the State of West Virginia. The proposed voting systems must meet the standards set forth by the Help America Vote Act of 2002 (HAVA) and the West Virginia certification process. The selected Vendor must provide corresponding training, device programming, maintenance, warranty, support and system software upgrades.

West Virginia is seeking to purchase approximately 2,021 unassisted access DRE's to be distributed throughout the 55 counties in the state, as well as approximately 50 central count optical scan voting systems. We also expect to purchase approximately 1,500 DRE's for those counties that wish to utilize this type of system in lieu of the optical scan system. All polling locations within West Virginia will have approximately one unassisted access DRE. Automated integration of election tallying must be included within the framework of the devices. The quantities of required items are specifically subject to change due to potential changes in eligible voters.

From the time that the contract is awarded until contract completion; the selected Vendor will be required to provide all election programming (at the discretion of each county) and on-site technical support and programming support for the counties that have deployed voting systems.

Clarifications:
All quantities of hardware, software and other items specified in this RFP are for the information of the Vendor regarding the State's current intent. The listed quantities in no way obligate the State to purchase the full amount under the resultant contract. In addition, the State reserves the right to negotiate amendments to the resultant contract to incorporate new models of voting devices that may become available after the contract is awarded.

Project Goals:

a) Provide the voters of West Virginia with an accurate, cost effective, user friendly election system;

b) Implement a voting system that provides "uniform and nondiscriminatory election technology" that meets all specific voting standards set forth by the State of West Virginia and the Help America Vote Act;

c) Encourage and improve election accessibility for individuals with disabilities;

d) Replace all voting systems deemed inadequate by the Help America Vote Act; and

e) Complete statewide election system implementation by December 31, 2005.

State-Furnished Services:
The State Purchasing Division will provide a Project Director to oversee the progress of the RFP process and the award process. This Project Director will provide oversight and general administration to the awarded Vendor(s) from contract execution until conclusion. The Secretary of State's Office will also appoint a Project Director who will have responsibility for ensuring that post contract tasks are completed as scheduled. The Project Director, working in conjunction with the awarded Vendor(s), will determine the schedule and format for all project progress related tasks. These tasks include but are not limited to items such as progress reports, status meetings, etc.

The Secretary of State will form a committee to assist the Project Director in monitoring and managing the progress of the project. The committee will be made up of a diverse group of members representing the entities impacted by the election process changes of this project.

Description of Specific, Results-Oriented Tasks:
The awarded Vendor will be required to meet all project milestones/deadlines identified in the Schedule of Events in Section 2.14. The following deliverables will be required for the successful completion of this project:

a) Implementation of installed and configured central count optical scan, DRE, and unassisted access DRE voting devices;
b) Complete adherence of all voting device equipment to West Virginia and HAVA certification requirements;
c) Election Management Systems;
d) Election Reporting Systems;
e) Election Administration Support (including programming);
f) Comprehensive and Extensive Voting Systems Training;
g) Hardware, Software and Firmware Documentation; and
h) Warranty.

These deliverables are described in more detail in Section 4.07.

Quality Assurance:
Quality assurance will best be monitored by the awarded Vendor(s) ability to fully meet the project milestones/deadlines identified in the Schedule of Events in Section 2.14 and the project related tasks determined by the Project Director. The Committee will be responsible for establishing specific quality control guidelines during the performance of the contract. Non-performance may be indicated by failure of the system to meet the requirements set forth in this RFP or any other failure to comply with reasonable expectations of performance.

Intended Schedule:
The Project Director designated by the State must be informed of and approve any

deviance from the project schedule by the awarded Vendor well in advance of the deliverable date. Failure to meet this requirement will jeopardize the contract completion and the standing of the awarded Vendor(s).

4.02
Location of Work:
With the exception of training and maintenance, only limited on-site performance is required by the Vendor. The Secretary of State does not expect to provide any space or facilities for the successful Vendor other than what is explicitly required by provisions of this RFP.

The State and the counties will suggest locations for training classes conducted by the Vendor. These classes will most likely be held in the county seat of each county. However, the State will entertain additional suggestions for training locations/arrangements as well. Some larger counties will have multiple training sessions before each election due to the number of election officials, which includes all election day poll workers and all alternates, being trained. All costs related to training on new devices purchased as a result of this RFP will be born by the Vendor. Counties will continue to pay traditional poll worker training costs.

The Vendor should include in their cost proposal: transportation, lodging, and per diem costs sufficient to pay for any travel requirements as dictated by their response to the Scope of Work (Section 4.01) and Deliverables (Section 4.06) sections of this RFP.

NOTE: **Do not** list these travel and lodging costs as additional items in your proposal. Your proposal **must be inclusive** of these costs. Please include all travel-related costs in your proposal. In the event that additional travel and lodging costs are included in the proposal, your proposal will be disqualified.

4.03
Vendor Qualifications:

Minimum Standards:
In order for offers to be considered responsive, Vendors must meet stated minimum standards. A Vendor's failure to meet these minimum standards will cause their proposal to be considered non-responsive and their proposal will be rejected.

Previous Experience:
The Vendor must demonstrate their experience with similar projects by providing a list of previous engagements within the past five (5) years where the Vendor successfully implemented voting system(s). Scoring preference will be given to projects of similar or larger size and complexity than that proposed for West Virginia. If the experience listed is that of a Subcontractor, then that fact must be noted. If the Vendor cannot provide this list, then the Vendor's proposal will be considered non-responsive and the proposal will be rejected. The list must contain:

a) Brief description of the voting system and services offered;
b) Key dates of the engagement (i.e. award, contract, training, implementation, elections conducted, support);
c) Model of voting device(s) implemented;
d) Description of training approach;
e) Duration and contents of support agreement (if applicable); and
f) Warranties provided.

References:
A minimum of three (3) customer references must also be provided. Scoring preference will be given to references from current or former clients where the Vendor successfully implemented voting system(s) of equal or larger size and complexity than proposed for West Virginia. References must include:

a) Client organization name;
b) Contact name, title, telephone number, e-mail and project responsibility;
c) The product/services provided; and
d) Duration of contract(s) and current relationship.

Financial Status:
The Vendor must clearly demonstrate their financial capability to successfully complete the project deliverables and meet the long-term on-going requirements for system support. The Vendor's proposal must include the following items:

a) Copies of the last two (2) years audited financial statements;
b) Number of years the Vendor has been in business;
c) Number of years the Vendor has provided DRE voting systems and optical scan systems; and,

d) Vendor's available letter of credit and Dunn & Bradstreet rating.

Vendors are encouraged to provide a three year post-contract plan for continuing support of proposed systems. Scoring preference will be given to proposals that include a detailed plan outlining their ability and intention to provide on-going support for proposed voting systems.

Capacity:
Due to the aggressive timeline for implementation, the Vendor must demonstrate the capacity to meet the delivery requirements for voting systems and the required support services. The Vendor must provide a statement of capacity in the Executive Summary affirming the Vendor has the capacity to perform all required activities as specified in the Scope of Work (Section 4.01), regardless of current, pending or future contracts with other customers. The Vendor should provide any additional information supporting the statement of capacity in their response to Section 5.06.

4.04
Voting System Requirements:

Minimum Requirements:
In order for offers to be considered, responsive proposed voting systems must meet the following minimum requirements. The minimum requirements refer to all proposed voting systems (i.e. standard DRE or unassisted access DRE or central count optical scan) unless otherwise noted. A Vendor's failure to demonstrate that the proposed voting system meets these standards will cause their proposal to be considered non-responsive and their proposal will be rejected.

4.04.01 State of West Virginia Certification
Revisions to State Law authorize the Secretary of State to propose rules for the purpose of certifying and decertifying voting systems to ensure compliance with Federal standards Any voting system proposed must be certified by the State prior to purchase or use in West Virginia. In the event that the selected voting system cannot be certified by the State, the contract will be terminated for cause by the Secretary of State.

4.04.02 Independent Test Authority (ITA)
All voting equipment, firmware and software proposed must be qualified by a National Association of State Election Directors (NASED) approved Independent Test Authority (ITA) or currently pending qualification by a NASED approved ITA provided the system has successfully completed the source code review portion of testing. The certification must be demonstrated with a copy of the qualification certificate issued by the ITA.

For systems pending qualification, documentation from the ITA that the system is pending qualification and that the source code review portion of the testing is

complete and satisfactory must be submitted with the proposal. In addition, a signed authorization directing the ITA to submit the results of its testing directly to the Secretary of State and allowing the Secretary of State full access to test records and data is required. All proposed equipment must achieve ITA qualification prior to contract award. If the Vendor does not provide an ITA qualification certificate to the State prior to the "Award" date, then their proposal will be deemed unresponsive, and their proposal will be rejected.

4.04.03 Election Assistance Commission (EAC):
All hardware and software components of the proposed system, including provisions for absentee voting and disabled voters, must comply with the EAC Voting System Standards. Evidence of this compliance shall be supplied in the form of the qualification number issued by the EAC.

4.04.04 West Virginia Law:
All hardware and software components of the proposed system, including provisions for absentee voting and disabled voters, must comply with the voting equipment standards set out in Chapter Three of the West Virginia Code as amended and all rules promulgated thereunder.

4.04.05 Compatibility:
The proposed optical scan, the DRE, and unassisted access DRE voting systems must be compatible with each other. Compatibility means that all election-related processes, such as ballot generation and vote tallying, must function in an integrated manner to minimize manual effort for the county officials The Vendor should demonstrate how their proposed devices are compatible and all election functions are integrated. The election setup process should only have to occur once per election. Furthermore, the proposed voting system should provide the ability to both program elections and tally results at the county and state level. It is the intent of this RFP to choose a Vendor who can successfully integrate the output from DRE and optical scan devices.

4.04.06 Accuracy:

All DRE voting systems must:

a. Permit each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on the ballot as a candidate; and permit each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in DRE voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;
b. Permit each voter at any election other than primary elections to vote a straight party ticket, as provided by West Virginia Code §3-6-5 including the ability to choose candidates from another party in certain votes in addition to the straight party votes for all other races;
c. Permit each voter in primary elections to vote only for the candidates of the party for which he or she is legally permitted to vote and precludes him or her from voting for any candidate seeking nomination by any other political party; permits him or her to vote for the candidates, if any, for nonpartisan nomination or election and permits him or her to vote on public questions;
d. Have the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;
e. Allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;
f. Allow election commissioners, poll clerks or both to designate, mark or otherwise record provisional ballots;
g. Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;
h. Accurately report all votes cast;
i. Provide logic to detect or prevent voter errors and allow the voter to correct/revote their ballot;
j. Control logic and data processing methods to detect errors and provide correction method;
k. Accommodate multi-member districts where multiple votes are cast for more than one candidate in the same election;
l. Provide for storage and tabulation of the same number of write-in slots as the number of votes allowed for a particular election;
m. Provide for the tabulation of votes cast in split precincts, where all voters residing in one precinct are not voting the same ballot style;
n. Provide for the tabulation of votes cast in combined precincts, where more than one precinct is voting at the same location, on either the same or a different ballot style
o. Maintain multiple ballot combinations on a single unit;
p. Easily download results from balloting into the final tally of results;
q. Provide logic and accuracy tests in the memory of the main processor and the programmable memory device used on Election Day, including zero printouts before each election and a precinct tally printout at the close of each election;
r. Permit diagnostic testing of all the major components within each unit;
s. Provide a Voter Verifiable Paper Audit Trail;
t. In the event of a failure in the unit, retain a record of all votes cast prior to the failure.
u. Present the ballot to the voter in a clear and unambiguous manner;
v. Store and present to the voter any ballot style in use in the given jurisdiction;
w. Report a list of write-in candidates receiving votes after the polls are closed;
x. Alert the voter about under votes before the final ballot is cast;

y. Prohibit over votes before the final ballot is cast; and,
z. Provide a summary at the end of the ballot describing the voter's choices prior to the final vote being cast.

All central count Optical Scan voting systems must:

a) Permit each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on the ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in central count Optical Scan voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;
b) Permit each voter at any election other than primary elections to vote a straight party ticket, as provided in section five, article six of this chapter;
c) Have the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;
d) Accurately report all votes cast;
e) Control logic and data processing methods to detect errors and provide correction method;
f) Accommodate multi-member districts where multiple votes are cast for more than one candidate in the same election; Provide for the tabulation of votes cast in split precincts, where all voters residing in one precinct are not voting the same ballot style;
g) Provide for the tabulation of votes cast in combined precincts, where more than one precinct is voting at the same location, on either the same or a different ballot style;
h) Maintain multiple ballot combinations on a single unit;
i) Easily download results from balloting into the final tally of results;
j) Provide logic and accuracy tests in the memory of the main processor and the programmable memory device used on Election Day, including zero printouts before each election and a precinct tally printout at the close of each election;
k) Permit diagnostic testing of all the major components within each unit;
l) In the event of a failure in the unit, retain a record of all votes cast prior to the failure;
m) Shall be configured to meet all pre-election and post-election testing requirements with testing samples;
n) Accurately scan and count all ballots received by county while detecting all possible errors;.
o) Accurately scan and separate split-precincts for tabulation of different ballot types;
p) Accurately detect and segregate overvotes, write-ins, blanks, and damaged ballots as needed;
q) Accurately scan a variety of ballot sizes;
r) Accurately scan a ballot with up to 6 columns and 150 oval positions;

s) Accurately display all detected errors to user before tabulation completed;
t) Accurately tabulate results of all races on ballots, including totals and precinct totals;
u) Accurately transfer data to the Election Management System with a level of security;
v) Accurately scan at a minimum of 250 ballots per minute;
w) Accurately scan ballots in varied directions;
x) Accurately scan ballots with both sides used;
y) Accurately merge ballots from same precinct if scanned out of order;
z) Accurately scan ballots of varied paper weight;
aa) Accurately scan ballots that use varied marking devices; and,
bb) Provide for a removal of an already counted precinct and a re-counting of that same precinct in the event of errors.

4.04.07 Audit and Security:

All DRE voting systems must:

a. Have a means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;
b. Generate a paper copy of each voter's votes that will be automatically kept within a storage container, that is locked, closely attached to the direct recording electronic voting machine, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article;
c. The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine;
d. The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy;
e. The voter may not touch, handle or manipulate the printed copy manually in any way;
f. Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine;
g. Bear a number that will identify it or distinguish it from any other machine;
h. Produce a Voter Verifiable Paper Audit Trail;
i. Ensure that each voter's ballot is secret and the voter cannot be identified by image, code or any other method;
j. Provide summary reports of votes cast on each voting device by extracting information from a memory or data storage device;
k. Provide reports (either printed or an Excel compatible file) regarding the opening and closing of the polls that include the following:

1. Identification of the election;
2. Poll opening and closing dates and times;
3. Identification of the voting device unit;
4. Identification of the ballot style(s);
5. Identification of the candidate(s) and/or issue(s), verifying a zero start;
6. Identification of all ballot fields and all special voting options;
7. Summary report of vote totals or ability to extract same;
8. Prevention from printing the summary report(s) prior to the polls being closed;

l. Be configured so as to perform the necessary pre-election testing of "logic and accuracy" for all hardware, firmware and software;
m. Allow programmable memory device(s) to be sealed in unit with a means of tamper detection;
n. Prevent the modification of the voter's vote after the ballot is cast;
o. Prohibit voted ballots from being accessed by anyone until after the close of polls;
p. Allow for extraction of data from memory devices to a central host; and
q. Provide safeguards against tampering, theft or damage; and,
r. Provide for a detailed print record of each ballot cast.

All central count Optical Scan systems must:

a) Ensure that each voter's ballot is secret and the voter cannot be identified by image, code or any other method;
b) Provide summary reports of votes cast on each voting device by extracting information from a memory or data storage device;
c) Provide reports (either printed or an Excel compatible file) regarding the opening and closing of the polls that include the following:
   i. Identification of the election;
   ii. Poll opening and closing dates and times;
   iii. Reports of all adjustments;
   iv. Summary number of overvotes, write-ins, blanks, and damaged ballots;
d) Prevent modification of results without the scanning of a ballot;
e) Allow for extraction of data to a management system; and,
f) Provide safeguards against tampering, theft or damage.

4.04.08 Technical Requirements:

All DRE voting systems must:

a) Consist of devices which are independent, non-networked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;
b) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

c) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;
d) Employ a reusable, removable and interchangeable memory device capable of storing election results for multiple precincts, districts, and ballot styles;
e) Store tabulation of votes, ballot by ballot, in two or more memory locations on separate integrated circuit chips that shall be electronically compared throughout the election generating an error message when differences are detected;
f) Plug in to a standard 110 volt AC outlet;
g) Provide a battery back-up unit, which can provide continuous operation in case of power failure for a minimum of two (2) hours;
h) Contain an internal clock for recording dates and times of all activities;
i) Provide for automatic zeroing or clearing of the accumulators prior to processing of actual voted ballots;
j) Contain a counter or provide for periodic printing of the number of ballots counted on the device;
k) Provide visual messages to assist in the resolution of problems or in the operation of the device;
l) Allow any removable components to be easily accessed or removed by election officials; and,
m) Require minimal maintenance during storage.

All central count Optical Scan systems must:

a) Employ a reusable, removable and interchangeable memory device capable of storing election results for multiple precincts, districts, and ballot styles;
b) Store tabulation of votes, ballot by ballot, in two or more memory locations on separate integrated circuit chips that shall be electronically compared throughout the election generating an error message when differences are detected.
c) Plug in to a standard 110 volt AC outlet;
d) Provide a battery back-up unit, which can provide continuous operation in case of power failure for a minimum of two (2) hours;
e) Contain an internal clock for recording dates and times of all activities;
f) Provide for automatic zeroing or clearing of the accumulators prior to processing of actual voted ballots;
g) Contain a counter or provide for periodic printing of the number of ballots counted on the device;
h) Allow any removable components to be easily accessed or removed by election officials;
i) Provide a display panel that reflects potential errors with ballots detected as the ballot is scanned;
j) Provide a back up recovery in the event of power failure; and,
k) Provide for data storage to transmit data electronically with other systems.

4.04.09 Voter Comfort:

All DRE voting systems must:

a) Allow adjustable font size and contrast for ease of sight;
b) Provide ballot including minimal, easy to follow on-screen instructions for use by the voter;
c) Make the voter aware of their ballot choice by clear means;
d) Provide voters a summary screen at the end of the ballot;
e) Be capable of supporting multiple languages;
f) Allow voter to change selection until the voter is satisfied with choice at anytime prior to the final casting of a ballot;
g) Allow the voter to review their write-in input to the interface, edit that input and confirm that the edits meet their intent;
h) Prompt the voter to confirm the voter's choices before casting their ballot, signifying to the voter that casting the ballot is irrevocable and directing the voter to confirm the voter's intention to cast the ballot, and shall further signify to the voter that the ballot has been cast after the vote is stored successfully: and
i) Provide a means to demonstrate the operation of the devices to the voters.

4.04.10 Accessibility:

All DRE voting systems must:

a) Meet or exceed all federal and state laws that address accessibility to voting;
b) Provide sufficient width, and have easily adjustable height, to allow wheelchair access, or provide an alternative solution if the devices are contained in a voting booth;
c) Allow the voter to review their write-in input to the interface, edit that input, and confirm that the edits meet their intent;
d) Provide a clear, identifiable action that the voter takes to "cast" the ballot;
e) Have a booth (if the devices are contained in a voting booth) designed so as to provide privacy for the voter while voting, be well lit, and equipped with a fixed surface of writing height on which to vote and accommodate elderly, disabled or other voters with special needs; and
f) Make clear to the voter how to cast a ballot, such that the voter has minimal risk of doing so accidentally, but when the voter intends to cast the ballot, the action can be easily performed.

Unassisted access DRE systems must also:

a) Provide a method by which voters can choose the language of the ballot whether presented visually or through audio devices;
b) Be adaptable for disabled voters, from a restructuring of the voting unit or booth to the removal of the device including being lightweight and portable enough for use on a voter's lap or to provide an alternative solution;
c) Provide audio instructions for the ballot and a mechanism for the visually impaired voter to cast a ballot, either on the voting unit, itself, or on a separate device designed for this purpose; and
d) Allow the auditory functions to be adjustable to meet the needs of the voter ;
e) Provide a sip and puff device for voters who have limited or no use of hands and/or arms; the device must include disposable mouth pieces;
f) Provide for the use of a stylus for voters who have limited or no use of hands and/or arms;
g) Provide buttons which are easily identifiable for people who are blind or visually impaired;
h) Allow the option of a blank screen for voters who are blind or visually impaired so they can be assured their vote is private (NOTE: this feature is desirable, but not mandatory);
i) Allow adjustable font size and contrast for people with visual impairments and colorblindness; and,
j) Allow for a election official to assist a voter in activation, either through remote help or direct access to the voting unit; or devices should allow the voter themselves to activate the unit using some form of activation device [i.e. smart card, access code, or activation cartridge].

4.04.11 Portability/Ease of Use:

All DRE voting systems must:

a) Be composed of equipment which is compact, portable, and made up of components each weighing less than 50 pounds;
b) Provide precinct units able to withstand frequent loading and unloading, stacking, assembling, disassembling, reassembling, and heavy use, without damage to internal circuitry;
c) Provide election officials with a method to immediately detect if a voting unit is not operating properly;
d) Be composed of equipment of such size as to be able to move through standard size doorways into various size polling places for storage in a particular location within the polling place prior to Election Day use if applicable. Most counties will store machines at a central location and transport them to the polling place prior to Election day;
e) Be transportable, without damage to internal circuitry; conditions for transporting could include extremely bumpy roads, exposure to extreme heat or cold, dust or other environmental elements;
f) Provide election officials with instructions that are easy to follow and easy to understand;
g) Include a printer that is easy for the election official to operate; and
h) Allow arrangement of the system components at the polls that do not create hazards for the voters and election officials.

All central count Optical Scan voting systems must:

a) Provide election officials with a method to immediately detect if a voting unit is not operating properly;

b) Be composed of equipment of such size as to be able to move through standard size doorways into various size polling places for storage in a particular location within the polling place prior to Election Day use if applicable. Most counties will store machines at a central location and transport them to the polling place prior to Election day;
c) Be transportable, without damage to internal circuitry; conditions for transporting could include extremely bumpy roads, exposure to extreme heat or cold, dust or other environmental elements;
d) Provide election officials with instructions that are easy to follow and easy to understand;
e) Include a printer that is easy for the election official to operate;

4.04.12 Communications:

It is highly desirable for all voting systems to:

a) Provide for network reliability in the speed and accuracy of data transmission of election results;
b) Provide for encryption of data transmissions that prohibit access to or manipulation of data transmissions;
c) Provide for the removal of an already counted precinct and a re-counting of that same precinct in the event of errors in transmission;
d) Be capable of transmitting election results to a host system from a precinct or district, or from a regional receiving site; and
e) Provide for accurate and immediate transfer of data.

Current West Virginia law does not allow networking or transmitting election results electronically from polling places.

4.04.13 Absentee Voting/Early Voting:

All DRE voting systems must:

a) Program absentee and early voting ballots from the same database and election definition used to program the precinct voting devices;
b) Allow the devices used for early voting to be deactivated at the end of each day and reactivated the next day without requiring the polls to be closed or results to be printed until early voting is completed;
c) Integrate absentee and early voting results with Election Day results seamlessly and immediately; and,
d) Produce and record results from optical scan ballots if applicable.

All central count Optical Scan voting systems must:

a) Integrate absentee and early voting results with Election Day results seamlessly and immediately.

4.04.14 Election Management System:

Any proposed Election Management System (EMS) shall consist of the hardware and software required to perform all processes from election setup through the completion of the election cycle. The EMS shall generate all required master and distributed copies of the voting program in conformance with the definition of the ballot for each polling place and voting device, including devices required to facilitate absentee voting, early voting, language accessibility, and disabled voters. The software must ensure that county personnel can accomplish all EMS programming functions as a part of the election setup process. The EMS must include the following components:

Administrative Database

The EMS shall allow local and state election officials to generate and maintain an administrative database containing the definitions and descriptions of political subdivisions and offices within the jurisdiction. The environment in which all databases in the subsystem are maintained shall include all necessary provisions for security and access control.

The EMS shall provide for the definition of political and administrative subdivisions where the list of candidates or contests may vary within the polling place and for the activation or exclusion of any portion of the ballot upon which the entitlement of a voter to vote may vary by reason of place of residence or other such administrative or geographical criteria.

For each election, the EMS shall allow the user to generate and maintain a candidate and contest database and provide for the production or definition of properly formatted ballots and software. This database shall be used by the system with the administrative database to format ballots or edit formatted ballots within the jurisdiction.

The proposed software shall allow additional districts to be added to the election structure without affecting the existing ballot typing in the ballot management software.

Election Programming

The EMS shall provide a mechanism for definition of the ballot, including the number of allowable votes for each contest and for special voting options such as write-in candidates. The EMS should also provide a software capability for the creation of newly defined elections, for the

retention of previously defined formats in that election, and for the modification of a previously defined ballot format. Data entered during election setup shall be carried through ballot layout and production of final canvasses with minimal, if any, duplicate data entry. The proposed software shall automatically transfer all ballot setup information from the EMS to the ballot tabulation system.

Ballot software should allow counties the capability to program memory devices for absentee voting, early voting and Election Day tabulation for each proposed voting system from a single, uniform application.

The election setup parameters shall accommodate multiple candidates, offices, parties, provide rotation (for primaries and general elections) of the same, and all other voting options and specifications as provided for by State law.

Absentee Voting/Early Voting

The EMS must fully support the absentee and early voting requirements as specified in Section 4.04.12.

Write-In Candidates

The proposed system shall provide a means of recording votes cast for candidates for any office whose names do not appear upon the ballot. It must allow for each voter to enter as many names of write-in candidates as the voter is entitled to select for each office. All official write-in votes shall be merged seamlessly.

Election Testing

The software must provide a mechanism for testing correctness of the election programming for each voting device and polling place. Such testing must be capable of ensuring accurate programming by simulating an actual election from setup to final vote tally in accordance with Chapter 3 of West Virginia Code.

Statewide Integration

The county EMS should be able to receive data electronically from the state in an agreed upon format that contains at a minimum the following data:

a) Full candidate name;
b) Address line;
c) Candidate sequence;
d) Text of ballot questions and voting option language;

e) Name of authorized presidential candidate when applicable;
f) Office name;
g) Number to vote for each office;
h) Party affiliation;
i) Ballot style indicator; and,
j) Number of registered voters at the precinct.

4.04.15
Election Reporting Requirements:

The proposed Election Reporting system must:

a) Receive and seamlessly integrate results from all proposed voting devices, including the ability to merge results from a precinct count optical scan device and an unassisted access device in the same precinct;
b) Prevent provisional ballots from entering the count on election night;
c) Provide a cumulative, canvass and precinct report of absentee voting, early voting and Election Day voting as one total;
d) Provide for unofficial reports including absentee, early voting, Election Day, write-ins and total vote;
e) Provide for official reports including absentee, early voting, Election Day, write-ins, provisional and total vote;
f) Provide for unofficial and official reports including absentee, early voting, Election Day, write-ins and total vote;
g) Provide, for election night reporting, a listing of precincts/districts reporting and a listing of precincts/districts not reporting;
h) Provide the ability to custom design election reports;
i) Provide for the removal of an already counted precinct and a re-counting of that same precinct in the event of errors in transmission or any other type of error;
j) Generate results in an agreed upon format for election night reporting;
k) Allow all reporting requirements to be met at both the county and state level (where applicable);
l) Provide for the transmission of election results through whatever medium chosen by the State:
   i) County;
   ii) Precinct;
   iii) District;
   iv) Candidate Name;
   v) Office;
   vi) Number of votes for (including ballot questions);
   vii) Number of votes against (where applicable) (including ballot questions); and
   viii) Number of ballots cast at the precinct level (by party affiliation if applicable);

l) Provide for the return of data from any or all counties to a central state location where statewide results for any or all counties may be seamlessly integrated for state races;
m) Provide for the download of election results into widely used formats, at a minimum, ASCII, HTML and Excel;
n) Provide for election results to be produced in such a manner as to allow for easy copying for paper distribution; and
o) Provide a system audit log containing sufficient information to allow the auditing of all operations related to central site (state or county) ballot tabulation, results consolidation and report generation, including at a minimum:
   i) Program identifier and version number;
   ii) Election file(s) used;
   iii) Record of options entered by the operator;
   iv) Record of actions performed by the software; and
   v) Record of all tabulation and consolidation input.

4.05 Federal Requirements:
The Vendor must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

Any voting system(s) proposed by the Vendor must meet all voting system standards set forth in Title III, Section 301 of the Help America Vote Act of 2002 (HAVA). These standards include, but are not limited to:

a) Audit Capacity;
b) Accessibility for individuals with disabilities;
c) Alternative language accessibility; and
d) Error rates.

For the five (5) years following the contract award, the successful Vendor is solely responsible for meeting HAVA Title III compliance requirements, once said requirements have been set out by the Election Assistance Commission (EAC), on all provided voting systems, at no cost to the State or Counties.

4.06 Deliverables:

The Vendor will be required to provide the following deliverables:

Implementation of Installed and Configured DRE's and Unassisted Access DRE's and Optical Scan Voting Devices
The Vendor will be responsible to:
a) Comply with all delivery and setup dates;
b) Provide the Project Director designated by the State with a checklist to be completed and signed attesting to the successful installation, configuration and testing of the voting device equipment. The Project Director may assign this task to other personnel as required; and
c) Ensure the price of all procured voting devices will remain the same throughout the life of the contract.

Complete Adherence of All Voting Device Equipment to West Virginia and HAVA Requirements
The awarded Vendor must be able to validate the capabilities of the proposed voting devices. Each type of voting device equipment must adhere to the certification requirements set forth by the State of West Virginia (see Appendix A) and HAVA. The awarded Vendor must develop and facilitate a detailed demonstration session for the Secretary of State and invited guests by August 19, 2005. This demonstration session will be used to confirm that the proposed voting devices meet the aforementioned requirements. The Vendor will:

a) Develop and submit a walk-through document prior to the session that can be used by the Secretary of State to identify if each minimum requirement has been met;
b) Identify and confirm during the demonstration session when a requirement is being met; and
c) Document and respond to any and all questions related to the demonstration. A form of detailed "minutes" must be provided to the Project Director within one week of the walk-through.

Election Management System (EMS)
The awarded Vendor must provide a fully functional Election Management System. It must include all software and any hardware required for each jurisdiction (state or county) purchasing the system. The EMS must support the following functions:

a) Administrative Database;
b) Election Programming;
c) Absentee and Early Voting;
d) Write-in Candidates;
e) Election Testing; and
f) Statewide Integration;

Election Reporting System
The awarded Vendor must provide a fully functional Election Reporting System. It must include all software and any hardware (that is not typically included with a standard PC workstation) required for each jurisdiction (state or county) purchasing the system. This system must meet all reporting requirements as specified in section 4.04.14.

Election Administration Support
The awarded Vendor will be required to perform the following election administration support functions:

a) The Vendor must establish a Project Manager or primary contact person. This individual must serve as the primary point of contact. They will be responsible for communicating and facilitating all directives and issues provided by the Project Director, the Committee, and/or the Secretary of State. This individual will work in close conjunction with the Project Director. Any change to the person filling this role must be approved in advance and in writing by the Secretary of State;
b) The Vendor must maintain a direct, toll free telephone number for the duration of the contract and subsequent renewals to facilitate access to the Project Manager;
c) The awarded Vendor will prepare a plan to support the counties in which the system is being deployed. On-site technical support shall be provided to counties for federal (Primary, General, and Special) elections in which the new voting system, or parts thereof, are being utilized for the first time. Vendors may structure their support plan to reflect regional on-site technical support for elections, providing recognition of geographic restrictions and coverage capability of the number of polling locations within the Vendor-proposed regional area. Some of the responsibilities of on-site technical support include but are not limited to polling place troubleshooting, sufficient supply of spare parts, reliable mode of transportation, and immediate communication access to Vendor staff;
d) The Vendor shall perform all pre-election programming, ballot setup, and associated training for completed counties during the contract period;
e) On-site technical support must be available for comprehensive election day support; and
f) Post election testing and reporting.

Comprehensive and Extensive Voting System Training
The overall success of this project will rely on effective training as much as effective voting device equipment. The awarded Vendor will be responsible for providing a comprehensive training program and related manuals throughout the duration of the project for all phases. Each responding Vendor will be required to address the totality of their training curriculum in their bid response. Training programs should cover every function ranging from programming of voting devices to troubleshooting techniques and to Election Day polling place procedures. Training programs, related materials, and documentation will be provided at all levels of the election process. Such training shall be sufficient to the point that local election officials will be able to operate the voting systems without the continuous assistance from the Vendor. In addition, the Vendor must provide well designed, accurate, and voter friendly brochures describing to the voters how the voting devices are operated, and indicate in the Vendor's proposal the number of brochures to included. The proposal must include a list

of all types of reusable training materials (i.e. manuals, videos, CD ROMs, etc.) that are available and the number of each included in the Vendor's proposal.

Hardware, Software and Firmware Documentation
The Vendor will provide the appropriate documentation and related materials for the following:

a) A copy of the release software, firmware, utilities, hardware, and instructions required to install, operate and test the voting system;
b) Diskettes, tapes, or compact disks containing copies of all source code files required to develop the system object code and firmware; with any utilities, hardware, and instructions required for the State to read the source code on a personal computer with a Microsoft based operating system;
c) System flow charts describing the information flow; entry and exit points; and the relationship of programs, device drivers, data files, and other program components;
d) Identification of version, release, and modification levels of all software and firmware components;
e) Identification of the steps and procedures required to generate all program modules providing system functions for which certification is requested; and
f) One complete set of user and technical documentation for all hardware components required to operate each system for the Secretary of State and local election officials, in both printed and electronic format.

Warranty
The Vendor shall provide:

a) A minimum of a five (5) year warranty, for all Voting System hardware and software, regardless of whether this warranty period for any piece of equipment and software shall extend beyond the term of this contract as described in this RFP;
b) Documentation and acceptance testing for each delivered unit;
c) During the term of the warranty, all software, firmware and hardware updates, as well as all software, firmware and hardware patches to repair defects in the system, at no additional charge to the State; and,
d) Any mandatory changes in EAC standards and policies will be programmed and/or delivered by the Vendor at no additional cost to the State or Counties.

SECTION FIVE
PROPOSAL FORMAT AND CONTENT

5.01 Proposal Format and Content:
The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, Vendors must follow the format set out in this RFP and provide all information requested. A Vendor's failure to include any of these items in their proposal may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

5.02 Transmittal Letter:
A transmittal letter, at the beginning of the proposal, should include the complete name and address of Vendor's firm and the name, mailing address, e-mail address, telephone number and fax number of the person the State should contact regarding the proposal.

Proposals must be signed by a company officer empowered to bind the company.

5.03 Executive Summary:
The executive summary must:

a) Briefly summarize the Vendor's understanding of the State's requirements;
b) Provide a short synopsis of how the Vendor's proposal meets or exceeds the State's requirements;
c) Confirm that the Vendor will comply with all provisions in this RFP;
d) Disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (such as employed by the State of West Virginia);
e) Contain the statement of capacity required under Section 4.03;
f) Note any sections of the proposal that are confidential along with the reasons for confidentiality;
g) Include a statement of guarantee that the Vendor will constantly afford the State the lowest price for equipment and software that it charges to any non-Federal customer (not including volume discounts);
h) Include a statement of guarantee that should any West Virginia county purchase additional voting systems outside of the contract resulting from this RFP, the unit prices will not exceed those proposed in response to this RFP for a period of three (3) years following contract award;
i) Identify any and all exceptions taken to the requirements of this RFP, Contract or attachments; and,
j) Include a statement that your company is ISO 9000 certified or is in the process of becoming ISO 9000 certified.

5.04 Voting System Requirements:
Vendors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule. All requirements (bullet point or paragraph) must be addressed individually with a clear explanation of how the Vendor plans to meet that requirement. Be specific when responding, as these responses will be evaluated and scored to determine the Vendor selected for award. Voting system requirements should be addressed for each voting system proposed.

This section of the proposal shall be organized into two major sub-divisions: minimum requirements and scored requirements.

Minimum Requirements:
Any proposed voting system that does not meet the minimum requirements will cause the proposal to be considered non-responsive and the proposal will be rejected. The minimum voting system requirements are found in Section 5.04 of this RFP. Responses to voting system minimum requirements should be organized as follows:

a) Understanding of State of West Virginia Certification Requirements
b) Compliance with ITA Requirements
c) Compliance with EAC Voting System Standards
d) Compatibility
e) Accuracy
f) Audit and Security
g) Technical Requirements
h) Voter Comfort
i) Accessibility
j) Portability/Ease of Use
k) Communications
l) Absentee Voting/Early Voting
m) Election Management System
n) Election Reporting
o) Federal Requirements

Scored Requirements:
Proposals including voting systems that meet all minimum requirements will then be scored for evaluation against other offers. Scoring will be based on the answers to the following questions (questions apply to each proposed voting system unless otherwise noted):

a) Please describe your proposed DRE voting device, and your unassisted DRE voting device, and its capabilities, with emphasis on the following questions:

    i. Does the device produce a paper ballot?
    ii. Does the device produce a voter verifiable paper record of the vote cast? If so, please describe the record and whether it is optional or mandatory.

iii. Does the device produce an audit trail that can be used in recounts?
iv. What is the average life cycle of the device?
v. What is the average time it takes to vote on the device?
vi. How many different ballot styles does the device accommodate at one given time? What are capacity requirements?
vii. How large is the device and accompanying hardware during storage and when assembled for voting?
viii. What are the storage requirements of the device, including any environmental requirements related to heat and humidity, as examples?
ix. What is the weight of the device and accompanying hardware?
x. What is the screen size(s)?
xi. What are options related to changing unit heights to accommodate special need voters?
xii. What are the available font sizes?
xiii. What are the color options?
xiv. What are the options for changing contrast?
xv. If options are changed, can they be reset to defaults by a single action?
xvi. Describe the user interface with the system, particularly for accommodating voters' disabilities relating to vision, hearing, cognitive abilities, learning, physical mobility and fine motor skills.
xvii. Describe the configuration and use of the "touch-screen keyboard" or equivalent function for the input of write-in candidates?
xviii. Describe the configuration and use of the keypad or other manual entry mechanism.
xix. Is there a single key or function that allows the user to go back to the previous screen/entry to make corrections?
xx. Describe any alternative input methods available for disabled voters.
xxi. Does the device require the voter to insert a card or other item to begin voting? If so, describe the process including access for disabled voters.
xxii. If the proposed device requires an optical scan device to read a marked ballot, then list all supported devices by manufacturer and model number.
xxiii. Describe how your voter verifiable paper trail (VVPT) will work and whether it can be changed as a setup option to bypass VVPT in the event West Virginia State Law changes. Note current West Virginia State Law requires that a VVPT be used.
xxiv. Does your system provide for random storage, retrieval and printing of votes cast?
xxv. Does your system provide for random storage, retrieval and printing of VVPT's?

b) Provide any additional features that will be included with unassisted access DRE devices, including but not limited to:

i. Does the device accommodate audio recording of voting information for dissemination to visually impaired voters?
ii. Does the device provide an option for synthesized or digitized speech to disseminate information to visually impaired voters? If so, please describe the function in detail including the manufacturer, options for replacements or upgrades and user satisfaction.
iii. Does the device allow the user to adjust audio playback speed and/or volume?

c) Provide any additional features that will be associated with central count optical scan machines.
d) Please describe how your current products will change and be enhanced over the course of the next two years.
e) Describe in detail the methods for handling recounts on each voting system.
f) What are the reporting and audit techniques that are incorporated into each voting system?
g) Describe the redundancy systems for recording votes and explain which back-up devices or audit functions of the system can be used to independently verify the vote totals cast.
h) What are the impacts, procedures and remedies in the event of a power failure? What if the battery backup fails as well?
i) What system is in place to identify and record any attempt at tampering with the system?
j) Describe the types of election reports available and the flexibility in the production of these reports.
k) Describe the process required for non-English ballot support.
l) What is an average anticipated "turn-around time" in programming voting systems for use during the short time between ballot certification (60 days before the election) and the date of the election? How will you ensure that customer programming needs are met?
m) What is the average anticipated "turn-around time" for ballot design, preparation, and delivery for use during the short time between ballot certification (60 days before the election) and the date that absentee ballots must be made available (42 days before the election), according to law? Between ballot certification and the date of the election? How will you ensure that customer ballot needs are met?
n) What are your specifications for paper used in your devices?
o) What is the minimum lead-time required for last minute ballot changes?
p) What procedures are in place to notify the voter of an under vote or over vote?
q) What procedure is in place to allow the voter to review the ballot prior to casting the ballot?

r) What methods of voter education have you found to be most successful in establishing voter familiarity and comfort with your system?
s) Describe how your system protects the voter's secrecy while voting.
t) How often do the machines require regularly scheduled maintenance?
u) In the instance of equipment malfunction, is the voting unit capable of retaining a record of all votes cast prior to the malfunction? How are the ballots recaptured and included in the election results?
v) If the polls are to be kept open later by special order may the election be reopened (assuming there is a break in the day) with the new votes being added to the votes cast earlier that day?
w) Explain how your system tallies and reports write-in votes. Include any manual steps that are required to be performed by election officials and/or county staff.
x) Describe the abilities of the proposed Election Management System and Election Reporting System to ensure the integrity, availability and security of data.
y) Identify each item of equipment, software and service you are proposing including model number, version and revision number of software.
z) Are the models and versions proposed identical to those tested by the ITA?
aa) Describe how the "back end" votes tallying process will work to integrate optical scan devices, unassisted DRE voting device and DRE voting device output in a seamless manner.

The proposal must include all necessary equipment, software, services and support to any user entity in the State of West Virginia. All initial equipment ordered shall be newly manufactured, not reconditioned or refurbished in any way. The proposal must include all microcomputers, printers, hardware connector cables, cabling, operating system software, software applications, training, training manuals, maintenance manuals and technical support required to provide a fully functional voting system.

Proposed DRE's and unassisted access DRE devices must include all materials required for the "voting booth" needed for the device. Any answers or statements provided by the Vendor regarding the dimensions, weight, storage requirements, ease-of-use or portability of the proposed unassisted access device must include the voting booth materials as well.

5.05 Management Plan for Implementation, Training, Service and Support:
Vendors must provide comprehensive narrative statements that set out the methodology and management plan they intend to follow and illustrate how the plan will serve to accomplish the work and meet the State's project schedule. The management plan must address the entire life cycle of the proposed voting system from initial delivery and training through on-going annual support and election programming.

The management plan should address how the Vendor will meet the required deadlines for the following events taken from the Schedule of Events (Section 2.14) and Scope of Work (Section 4.01):
a) Completion of programming;
b) Provision of on-going programming services for 2006 and beyond; and
c) Post-implementation hardware and software support for production voting systems during 2006 election year and beyond.

In addition, the plan must specifically address and provide adequate planning to accomplish all tasks outlined in Deliverables (Section 4.06), including:
Implementation of installed and configured optical scan, DRE, and unassisted access DRE;
Complete adherence of all voting device equipment to West Virginia and HAVA certification requirements;
Election Management Systems;
Election Reporting Systems;
Election Administration Support (including programming);
Comprehensive and Extensive Voting Systems Training;
Hardware, Software and Firmware Documentation; and
Warranty.

The proposal must indicate by name a Project Manager or other designated single point of contact for the duration of the contract. This individual will be the primary contact for the State of West Virginia and the Secretary of State or its counties for any necessary communication with the Vendor.

5.06 Experience and Qualifications:

Vendors must provide an organizational chart specific to the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Vendors must provide a narrative description of the organization of the project team and personnel roster that identifies each person who will actually work on the contract and provide the following information about each person listed:
a) Title;
b) Resume;
c) Location(s) where work will be performed; and
d) Duration of employment with the Vendor.

If a Vendor intends to use Subcontractors, the Vendor must identify in the proposal the names of the Subcontractors and the portions of the work the Subcontractors will perform.

Proposals must address the requirements from Vendor Qualifications (Section 4.03) including:

a) Previous Experience;
b) References;
c) Financial Status; and
d) Capacity.

The State reserves the right to contact any or all references provided by the Vendor. Vendors are invited to provide letters of reference from previous clients.

5.07 Cost Proposal:

Cost proposals must be completed according to the Cost Proposal Template provided as Appendix B. All line items of the template must be completed in full. Should a Vendor wish to indicate that a line item in the template does not apply to their proposal, it should be entered as a zero (0). An incomplete template will be determined to be non-responsive, and the Vendor's proposal will be rejected. The Vendor is encouraged to include any explanations, details or notes regarding their cost proposal separately from the Cost Proposal Template.

All costs associated with the contract must be stated in U.S. currency.

Cost proposals will be evaluated after the technical proposals; therefore, Vendors must submit the cost proposal in a separate, sealed envelope.

Voting Device Costs:

The voting device costs must be separated between central count optical scan devices, DRE systems, and unassisted access DRE's. All costs must be indicated on a per unit basis for each type of device. Furthermore, unit costs must be divided into the categories provided on the template. For evaluation and scoring purposes the final voting device cost used will be the unit cost of the central count optical scan device multiplied by 50, plus the unit cost of the DRE's multiplied by 1,500 plus the unit cost of the unassisted access DRE's multiplied by 2,021. By using the 1,500 and the 2,021 value, the State does not imply that any specific number of devices of each type will necessarily be purchased. The State reserves the right to purchase any number of devices, up to (or slightly over) 6,000, at the unit cost proposed by the Vendor. The Vendor must assure the State that they have the capacity to supply the maximum number of devices envisioned by this RFP. All unit costs proposed must be held firm by the Vendor for the duration of the original contract. The Vendor must ensure that no other Contract receive better pricing than provided in its' response except for volume discounts.

Election Management System Costs:

The proposed cost for the EMS system proposed by the Vendor must be stated as a statewide cost encompassing all 55 West Virginia counties and a central State installation. This figure will be used for evaluation and scoring. The State anticipates

that a statewide license or volume discount would provide a statewide figure significantly less than the per license cost multiplied by 56 (55 counties and 1 state license).

Election Reporting System Costs:

The proposed cost for the election reporting system proposed by the Vendor must be stated as a statewide cost encompassing all 55 West Virginia counties and a central State installation. This figure will be used for evaluation and scoring. The State anticipates that a statewide license or volume discount would provide a statewide figure significantly less than the per license cost multiplied by 56 (55 counties and 1 state license). For Vendors with an integrated EMS and reporting system, all costs should be included in the EMS line items with zero (0) in the reporting system line items and should include adequate notes explaining that fact.

Voting Device Maintenance Costs:

The cost proposal must indicate the support costs for standard maintenance and upgrades on a per unit basis for voting devices after the warranty has expired. The cost per unit for central count Optical Scan devices, DRE devices and unassisted access DRE devices must be given for all three (3) option years. West Virginia rarely conducts elections in odd-numbered (non-election) years, except for municipal elections. This fact should be addressed in the Vendor's proposal and should result in lower maintenance costs in those years.

Programming Costs:

The cost proposal must indicate the election programming costs for a "standard" precinct for the original contract term plus three (3) option years. The programming cost given must assume one central count optical scan device and one unassisted access device per precinct. A "standard" precinct is assumed for this calculation to consist of three (3) ballot styles twenty five (25) races and four (4) candidates per race. The cost for a "standard" precinct will be used for proposal evaluation purposes only. The Vendor must also specify in the Cost Template their proposed programming rate and cost methodology (i.e. by hour, precinct, device, etc

Software Maintenance Costs:

The cost proposal must indicate the annual maintenance costs required for continued support and upgrades for the proposed Election Management System and Election Results System. For Vendors with an integrated EMS and reporting system, all costs should be included in the EMS line items with zero (0) in the reporting system line items and should include adequate notes explaining that fact.

5.08 Required Enclosures:

Vendors must provide all documents, samples, or other information specifically required in this RFP, including (but not limited to):

a) Letter of Commitment for performance bond or provision for surety deposit;
b) Sample source code escrow agreement;

c) Copies of last two (2) year end financial statements;
d) Qualification certificate issued by the ITA for each proposed voting system; and
e) Separate cost proposal (refer to Section 2.06.3).

5.09 Evaluation Criteria:
All proposals will be reviewed to determine if they are responsive. Responsive proposals will be evaluated using the criteria set out in Section Six.

Analysis and scoring of proposals deemed responsive will be conducted on an individual basis for Evaluation Committee clarification purposes only. Individual scores will not be averaged to create overall scores. The Evaluation Committee will be responsible for assigning a group-consensus score for each item of the proposal, which will be ascertained through discussion. The final overall score for each proposal will be result of the accumulation of the group-consensus item scores.

SECTION SIX
EVALUATION CRITERIA AND VENDOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100; (The maximum total number of Technical points is 65; the maximum total number of Cost points is 35.)

6.01 Voting System Requirements :
Twenty-five (25) total possible evaluation points will be assigned to this criterion. Proposals will be evaluated against the questions set out in Section 5.04 of this RFP.

6.02 Management Plan for Implementation, Training, Service and Support:
Twenty-five (25) total possible evaluation points will be assigned to this criterion. Proposals will be evaluated against the questions set out below.

a) How well does the methodology and management plan support all of the project requirements and logically lead to the deliverables required in the RFP?
b) How well is accountability completely and clearly defined?
c) Is the organization of the project team clear?
d) How well does the management plan illustrate the lines of authority and communication?
e) To what extent does the Vendor already have the hardware, software, equipment, and licenses necessary to perform the contract?
f) Does it appear that Vendor can meet the schedule set out in the RFP?
g) Has the Vendor gone beyond the minimum tasks necessary to meet the objectives of the RFP?
h) Is the proposal practical, feasible, and within budget?
i) Have any potential problems been identified?
j) Is the proposal submitted responsive to all material requirements in the RFP?
k) Have samples of training materials been provided and are they responsive to the needs of the State expressed in this RFP?

6.03 Experience and Qualifications:
Fifteen (15) total possible points will be assigned to this criterion. Proposals will be evaluated based on the information requested in Section 5.03 of this RFP. If the RFP required a minimum amount of experience or qualifications, no points will be deducted for meeting the minimum.

6.04 Contract Cost:
Thirty-five total possible evaluation points will be assigned to cost. The 35 point cost component will be further divided into four categories for evaluation: purchase price, on-going maintenance costs and on-going programming costs.

The purchase price category will make up twenty (20) maximum points of the overall score. Purchase price will be composed of the cost of the voting devices (based on 2,021 unassisted access DRE devices, 1,500 DRE devices, and 50 central count optical scan devices), the statewide cost of the Election Management System, the statewide cost of the Election Reporting System, associated training, warranties and peripherals.

The maintenance costs category will make up seven (7) maximum points of the overall score. Maintenance costs will be evaluated as the average of the three years proposed maintenance contract for one unassisted access device and one optical scan device.

The programming costs will make up five (5) maximum points of the overall score. Programming costs will be evaluated as the average of the programming costs for the initial contract term and the three option years proposed for a "standard" precinct (see Section 6.07 for definition) with one unassisted access device and one optical scan device.

The annual software maintenance cost will make up three (3) maximum points of the overall score. Annual software maintenance will be evaluated as the total annual maintenance fees charged for the Election Management System and Election Reporting System assuming a statewide installation (55 county licenses plus 1 state license).

The lowest cost proposal for each category will receive the maximum number of points allocated to cost for that category. The point allocations for that category of cost on the other proposals will be evaluated according to the method set forth below.

Applying Preference Laws:
The cost amount used for evaluation may be affected by the application of West Virginia preference laws (ref. Section 2.18). The preference given to a resident Vendor will be equal to the preference given or required by the state of the nonresident Vendor (i.e. reciprocal preference).

Converting Cost to Points:
After applying any reciprocal preference, the lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined as follows:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Total Points for Cost Available} = \text{Awarded Points}$$

SECTION SEVEN
ATTACHMENTS

7.01 Attachments

Attachments

1. Appendix A - West Virginia Law and Rules for Certification of Voting Systems
2. Appendix B - Cost Proposal Template
3. Appendix C - West Virginia County Information
4. Appendix D - Checklist for Vendors
5. Appendix E – Definitions
6. Vendor Preference Certificate
7. Vendor Registration and Disclosure (WV-1)
8. No Debt Affidavits

ATTACHMENT ONE
APPENDIX A – WEST VIRGINIA LAW AND RULES FOR CERTIFICATION OF VOTING SYSTEMS

§3-4A-8. Approval of electronic voting system by state election commission; expenses; compensation of persons examining system.

Any person or corporation owning or being interested in any electronic voting system may apply to the state election commission to the end that such system may be examined and a report be made on its accuracy, efficiency, capacity and safety. Upon the written application of any vendor tendered to the secretary of state or to any clerks in his office in charge of receiving filings for any purpose, it shall be the non-delegable, nondiscretionary duty of the secretary of state to fix a date, time and place, not more than thirty days after the receipt of such application, for a meeting of the state election commission for mutual consideration of such application, and to mail notice thereof by certified mail to each member of the commission.

The state election commission shall appoint two qualified computer experts who are not members of the same political party to examine the system and make full reports thereon to the commission within thirty days from the date of the application. They shall state in the report whether or not the system so examined complies with the requirements of this article and can be safely used by voters at elections under the conditions prescribed in this article. If the report be in the affirmative on said question, the system may be approved by the commission and, if approved by the commission, a system of its make and design may be adopted for use at elections as herein provided: Provided, That under no circumstances shall a system be approved that is not capable of accurately tabulating returns based upon all possible combinations of voting patterns including, but not limited to, crossover voting and in accordance with section five, article six of this chapter.

No electronic voting system shall be used at any election unless it has heretofore or hereafter been approved under this section or its former provisions. Each of the two qualified computer experts appointed by the commission shall be entitled to reasonable compensation and expenses in making such examination and report, and such compensation shall be paid by the person or corporation applying for such examination, which sum shall be paid in advance of making the examination and which sum shall be the sole compensation to be received by any such expert for his work hereunder.

3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;

(2) It is constructed to ensure that no person, except in instances of open voting as provided in this section, can see or know for whom any voter has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot or ballot label as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to deposit, write in, affix upon a ballot, card, envelope or other medium to be provided for that purpose, ballots containing the names of persons for whom he or she desires to vote whose names do not appear upon the ballots or ballot labels;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains a program deck consisting of cards that are sequentially numbered or consisting of a computer program disk, diskette, tape or other programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It permits each voter at any election other than primary elections by one mark or punch to vote a straight party ticket, as provided in section five, article six of this chapter;

(10) It permits each voter in primary elections to vote only for the candidates of the party for which he or she is legally permitted to vote and precludes him or her from voting for any candidate seeking nomination by any other political party, permits him or her to vote for the candidates, if any, for nonpartisan nomination or election and permits him or her to vote on public questions;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13)(A) Direct recording electronic voting machines must generate a paper copy of each voter's votes that will be automatically kept within a storage container, that is locked, closely attached to the direct recording electronic voting machine, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article.

(B) The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine.

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy.

(D) The voter may not touch, handle or manipulate the printed copy manually in any way.

(E) Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine.

(F) Direct recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

(14) Where vote recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Be constructed with frames for the placing of ballot labels that the labels upon which are printed the names of candidates and their respective parties, titles of offices and wording of questions are reasonably protected from mutilation, disfigurement or disarrangement or are constructed to ensure that the screens upon which appear the names of the candidates and their respective parties, titles of offices and wording of questions are reasonably protected from any modification;

(C) Bear a number that will identify it or distinguish it from any other machine;

(D) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question;

(E) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of ballot labels, party columns or rows, and questions;

(F) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(G) For electronic voting systems that utilize a screen upon which votes may be

recorded by means of a stylus or by means of touch, be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(H) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(I) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(J) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to allow election commissioners, poll clerks, or both, to designate, mark or otherwise record provisional ballots;

(K) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, consist of devices which are independent, non-networked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;

(L) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(M) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and

record votes;

(N) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to record all pre-election, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form;

(O) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(P) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

ATTACHMENT TWO
APPENDIX B – COST PROPOSAL TEMPLATE

Each Vendor must present a **firm fixed cost proposal** for the work to be performed. Said cost proposal should include all costs (separate provisions for travel and/or per diem will not be accepted).

Where there is a reference in this RFP to deliverables, submission requirements or other response and contract performance discussions, said reference might not be all inclusive of all requirements in the RFP. It is incumbent upon the Vendor to read this entire RFP carefully and respond to, and price, all requirements and ensure all costs proposed include all requirements.

Unit Cost for Unassisted Access DRE Device

A. Voting Device Unit (including hardware, software and firmware)	$
B. Accessibility Peripherals	$
C. Other Peripherals	$
D. Memory Cards	$
E. Modem	$
F. Manuals	$
G. Training	$
H. Warranty	$
I. Other (specify)	$
J. Total Unit Cost for Unassisted Access DRE Device (A + B + C + D + E + F + G + H + I)	$

Unit Cost for DRE Device

K. Voting Device Unit (including hardware, software and firmware)	$
L. Other Peripherals	$
M. Memory Cards	$
N. Modem	$
O. Manuals	$
P. Training	$
Q. Warranty	$
R. Other (specify)	$
S. Total Unit Cost for DRE Device (K + L + M + N + O + P + Q + R)	$

Unit Cost for Central Count Optical Scan System

T. Central County Voting Device Unit (including hardware, software and firmware)	$
U. Other Peripherals	$
V. Memory Cards	$
W. Modem	$
X. Manuals	
Y. Training	$
Z. Warranty	$
AA. Other (specify)	$
AB. Total Unit Cost for Central Count Optical Scan System (T + U + V + W + X + Y + Z + AA)	$

Election Management System

AC. Statewide License for 50 Counties and Central State License	$
AD. Single License for a County or the Central State License	$

Election Reporting System

AE. Statewide License for 50 Counties and Central State License	$
AF. Single License for a County or the Central State License	$

Grand Total Purchase Cost

AG. Statewide Voting System [(J x 2,021) + (S x 1,500) + (AB x 50) + AC + AE]	$

Voting Device Maintenance Option Year 1

AH. Per Unit for Unassisted Access DRE Device	$
AI. Per Unit for DRE Device	
AJ. Per Unit for Central Count Optical Scan Device	$
AK. Total per Polling Place	$

Voting Device Maintenance Option Year 2

AL. Per Unit for Unassisted Access DRE Device	$
AM. Per Unit for DRE Device	
AN. Per Unit for Central Count Optical Scan Device	$
AO. Total per Polling Place	$

Voting Device Maintenance Option Year 3

AP. Per Unit for Unassisted Access DRE Device	$
AQ. Per Unit for DRE Device	
AR. Per Unit for Central Count Optical Scan Device	$
AS. Total per Polling Place	$

Grand Total Voting Device Maintenance Cost

AT. Average Three (3) Year Maintenance per Polling Place [(AK + AO + AS) / 3]	$

Programming During Initial Contract Term

AU. "Standard" Precinct (see Section 5.07 for definition)	$
AV. Vendor's Proposed Programming Rate	$ /

Programming Option Year 1

AW. "Standard" Precinct (see Section 5.07 for definition)	$
AX. Vendor's Proposed Programming Rate	$ /

Programming Option Year 2

AY. "Standard" Precinct (see Section 5.07 for definition)	$
AZ. Vendor's Proposed Programming Rate	$ /

Programming Option Year 3

BA. "Standard" Precinct (see Section 5.07 for definition)	$
BB. Vendor's Proposed Programming Rate	$ /

Grand Total Programming Cost

BC. Average Programming per "Standard" Precinct [(AU + AW + AY + BA) / 4]	$

Statewide Annual Maintenance for Software

BD. Annual Maintenance for Election Management System	$

BE. Annual Maintenance for Election Reporting System	**$**
BF. Total Statewide Annual Maintenance for Software (BD + BE) (Grand Total Maintenance)	**$**

ATTACHMENT THREE
APPENDIX C - WEST VIRGINIA COUNTY INFORMATION

	Current Number of Precincts	2004 Voting Age Population	2004 Registered Voters	2004 Votes Cast for Governor	Voting and Counting Devices	Number of Devices	Own, Lease or Rent Devices
Barbour	23	11,980	9,340	6,601	Paper Ballot	N/A	N/A
Berkeley	59	56,376	52,308	33,308	CES Votomatic III Punch Card	307	Own
Boone	37	19,610	17,754	10,200	ES&S Model 150 Optical Scan	1	Own
Braxton	22	11,356	9,091	5,870	Paper Ballot	N/A	N/A
Brooke	27	20,247	16,308	10,752	Punch Card/Ballot Tabulator Voting Booths ES&S Model M300L	178	Purchased
Cabell	69	77,382	60,652	37,497	Votronic & Unity	250	Own
Calhoun	10	5,884	5,216	2,886	ES&S Optical Scan Model 150	1	Own
Clay	13	7,686	6,917	4,059	Optical Scan ES&S Model 150	1	Own
Doddridge	12	5,550	4,842	3,177	Optical Scan ES&S Model 150	1	Own
Fayette	39	37,239	27,640	16,895	ES&S Votomatic - Punchcard	290	Own
Gilmer	12	5,708	4,813	2,826	Optical Scan Counter ES&S 150	1	Own
Grant	15	8,737	7,819	4,605	Paper	N/A	N/A
Greenbrier	36	26,996	22,329	14,396	Optical Scan ES&S Model 315	1	Own
Hampshire	23	15,122	11,550	7,764	Optical Scan ES&S 150 OMR Ballot Reader	1	Own
Hancock	28	25,865	21,149	12,895	Shoup Lever Machines	115	Own
Hardy	14	9,715	8,079	4,913	Paper Ballot	N/A	N/A
Harrison	93	52,794	44,975	30,437	Optical Scan ES&S - 315	1	Own
Jackson	38	21,243	19,461	13,106	Optical Scan ES&S 150	1	Own
Jefferson	31	32,124	28,372	19,533	Punch Card - DBM through ESS	0	Rent
Kanawha	183	157,435	132,956	86,590	Punch Card ES&S	1,100	Own
Lewis	24	13,180	9,628	7,020	Optical Scan ES&S #650 and Ivotronic	5 iVotronic, 1 opscan	Own
Lincoln	35	16,899	18,580	8,214	Optical Scan ES&S	1	Own
Logan	52	29,374	27,607	14,367	Lever Machines	150	Own
Marion	75	44,927	41,155	24,924	ES&S Touch Screen Ivotronic	230	Lease with the Intent to Buy
Marshall	45	27,407	22,841	15,053	Punch Card - Machine Business Records Corp	275	Own
Mason	38	20,056	18,586	11,930	Optical Scan - ES&S 315	1	Own
McDowell	42	20,995	18,963	7,228	Optical Scan ES&S	1	Own
Mercer	61	49,710	32,677	22,343	Punch Card ES&S Model 1000L	300	Own

ATTACHMENT THREE
APPENDIX C - WEST VIRGINIA COUNTY INFORMATION

Mineral	35	20,747	15,754	11,255	AIS Model 115 Ballot Scanner	2	Own
Mingo	39	21,414	18,048	10,604	Punch Card ES&S	300	Own
Monongalia	92	66,950	51,323	33,561	Ivotronic and Optical Scanners ES&S 315	4 iVotronics, 2 opscan	Own
Monroe	17	11,650	9,014	5,901	Optical Scanner- AIS 115	1	Lease Purchase
Morgan	13	11,595	10,380	6,476	Paper Ballot	N/A	N/A
Nicholas	28	20,374	16,323	10,303	Optical Scan ESS Model 150	1 for Counting 208 Voting Booths	Own
Ohio	38	37,331	30,614	20,067	Votomatics Punchcard	340	Votomatics - own Tabulators - rent
Pendleton	13	6,407	5,297	3,349	Paper Ballot	N/A	N/A
Pleasants	11	5,728	4,968	3,370	Paper Ballot	N/A	N/A
Pocahontas	15	7,227	5,356	3,855	ESS Optical Scan 150	1	Own
Preston	35	22,390	17,705	11,869	Optical Scanner AIS 115	1	Own
Putnam	48	38,708	34,527	24,921	Punch Card Sequoia Voting System - Software	200	Own
Raleigh	63	62,150	48,288	30,329	Optical Scan Ballots - ES&S Optical Scan Reader	1	Own
Randolph	37	21,952	16,365	11,446	AIS 115 Optical Scan Counter	1	Own
Ritchie	15	7,967	6,586	4,143	Optical Scan ES&S Model 150	1	Own
Roane	20	11,834	9,206	6,108	ES&S 150 Optical Scanner	1	Own
Summers	15	10,330	8,849	5,477	ES&S 150 Optical Scanner	1	Own
Taylor	18	12,403	9,688	6,498	Paper Ballot	N/A	N/A
Tucker	11	5,764	4,965	3,565	Optical Scan ES&S	1	Own
Tyler	12	7,361	6,057	4,232	ES&S Optical Scan 150	1	Own
Upshur	29	18,126	13,918	9,288	Punch Card CES Model M 200 Tabulator CES Votomatic III Voting Devices DIS Card Reader Tabulator	Voting 200 Counting 2	Own
Wayne	37	32,881	30,761	17,618	Shoup Lever Machines	118	Own
Webster	14	7,487	6,053	3,726	AIS Model 115 Optical Central Ballot Scanner	1	Own
Wetzel	22	13,489	11,417	7,060	Votomatic Punch Card	155	Own/Lease Counter
Wirt	9	4,381	4,093	2,585	Paper Ballot	N/A	N/A
Wood	85	67,758	54,876	38,909	Optical Scanner - ES S&S 550-2	2	Own
Wyoming	39	19,950	16,655	8,529	Paper Ballot	N/A	N/A
Totals		**1,405,951**	**1,168,694**	**744,433**			

ATTACHMENT FOUR
APPENDIX D - CHECKLIST FOR VENDORS

- ❑ Submit any questions, comments, or requests for clarification to the Procurement Officer by the deadline for submission of questions.
- ❑ Review Sections 2.29 and 2.30. State any objections to any of the provisions in the Contract Form or Indemnification and Insurance Requirements prior to the deadline for submission of questions.
- ❑ Be sure the proposal is signed by an individual authorized to bind the Vendor to the provisions of the RFP.
- ❑ Comply with West Virginia State and West Virginia State Procurement Office Registration requirements prior to the deadline stated in the RFP.
- ❑ Comply with minimum requirements for experience.
- ❑ Comply with professional licensing requirements, and provide copies of certifications, if required.
- ❑ Provide the information about the qualifications of the firm and individuals that will be working on the project.
- ❑ Identify all known federal requirements that apply to the proposal, the evaluation, or the contract.
- ❑ Provide the required number of references.
- ❑ Provide all documents or materials that must be submitted with the RFP (see Section 5.08).
- ❑ Ensure that all confidential sections of the proposal are clearly marked as such.
- ❑ Provide samples of training materials.

ATTACHMENT FIVE
APPENDIX E - DEFINITIONS

Absentee Ballot A ballot that will be sent to a voter, upon request, who will then mark the ballot with his/her selections and return it his/her county clerk's office.

Bidder, Contractor, Offeror or Vendor (used interchangeably herein)
A Vendor who returns a properly completed bid in response to a request for proposal from an authorized state or agency purchasing agent and shall include all entities and employees of those entities that are directly or indirectly included in a proposal to provide services and/or equipment pursuant to this Request for Proposal.

Central County Optical Scan Voting System
An optical scan voting system wherein the processing and counting of ballots is done in a central location at the county level

DRE A Direct Recording Electronic device that:

- Records votes by means of a ballot display provided with mechanical or electro-optical devices;
- Processes the data by means of a computer program;
- Records voting data in internal memory devices; and,
- Tabulates voting data as hard copy or stored in a removable memory device.

EAC Election Assistance Commission: HAVA created the EAC to serve as a national clearing house and resource for the compilation of information and review of procedures with respect to the administration of Federal elections

Early Voting An option available to the voters under West Virginia law which provides an opportunity to cast their selections prior to Election Day in predetermined locations specified by the county

EMS (Election Management System)
The system used to allow programming of the voting devices for Election Day

Election Reporting System
The program used to produce tabulated results of ballots cast based on parameters chosen by the county

Evaluation Committee A committee appointed by the West Virginia Secretary of State to evaluate all proposals and make a recommendation for award of contract to the State Purchasing Division

F.O.B. Final Destination Free on Board Final Destination: The seller's responsibility for shipped goods ceases only when those goods arrive at the ultimate destination. Consequently, the seller is liable for all delivery costs. Title changes hands upon delivery and the Vendor owns the goods in transit and must file any claims

HAVA The Help America Vote Act of 2002

ITA Independent Test Authority: Organization approved by NASED to independently test and certify voting systems

NASED National Association of State Election Directors

WVC West Virginia Code (State statutes)

Optical Scan Voting System
System in which votes are recorded by means of marks made in voting response fields.

Over Vote Voting for more than the maximum number of selections allowed in a race.

Project Director Prior to the awarding of the contract, the individual designated by the State Purchasing Division as the primary contact for the awarded Vendor. Following the awarding of the contract, the individual designated by the Secretary of State as the primary contact for the awarded Vendor.

Project Manager The individual designated by the successful Vendor as the primary contact for the Secretary of State

Provisional Ballots
Allows individuals, who have been deemed provisional in accordance to West Virginia law, to cast a ballot. This ballot is not added to the voted ballots until it is determined by a canvassing board whether the individual has met all requirements to cast a ballot for that election.

RFP Request for Proposal

Sub-Contractor Vendors have the option to hire contracted employees to

assist with performance under this contract.

SOS The Secretary of State of West Virginia

State The State of West Virginia

Statutes Laws passed by Congress or a state legislature and signed by the President or the governor of a state, respectively, that are codified in volumes called "codes" according to subject matter.

Under Votes Any circumstance resulting in the maximum allowed number of selections for a race or ballot issue not being selected

Unassisted Access DRE Voting System A DRE voting system that provides voters with a disability a way to cast their ballot in secret without assistance

Voter Verifiable Paper Audit Trail (or Voter Verifiable Paper Trail) A DRE voting system-generated paper copy of each voter's votes that is automatically kept within a secured storage container attached to the voting device.

Voting System All the necessary components (hardware, software, and associated services) to fulfill the requirements within this RFP for the DRE, central count optical scan system, absentee ballot, and voter verifiable paper trail requirements.

Warranty A guarantee given to the state, by the Vendor, stating that a product or service is reliable and free from defects and that the contractor will repair/replace the defective product or re-perform the service.

ATTACHMENT
P.O # _____

This agreement constitutes the entire agreement between the parties, and there are no other terms and conditions applicable to the licenses granted hereunder

Agreed

_____	_____
Signature Date	Signature Date
_____	_____
Title	Title
_____	_____
Company Name	Agency/Division

State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER	PAGE
SOS36206	1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
RON PRICE
304-558-0492

VENDOR:
RFQ COPY
TYPE NAME/ADDRESS HERE

SHIP TO:
SECRETARY OF STATE
BUILDING 1, ROOM 157K
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV
25305-0770 558-6000

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
07/26/2005				

BID OPENING DATE: 08/01/2005 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
	ADDENDUM NO. 1					
	TO RESPOND TO QUESTIONS PER THE ATTACHED					
	NO OTHER CHANGES					
0001	1	JB		578-35		
	VOTING SYSTEM UPGRADE					
	****** THIS IS THE END OF RFQ SOS36206 ******				TOTAL:	

SCANNED

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

Request for Quotation
SOS 36206
Addendum 1

Question: **Is a ballot marking device an acceptable alternative to the Unassisted DRE?**

Answer: Yes

Question: **Can a vendor apply or submit an application for certification within the state prior to receiving a NASED 2002 System Number for the system?**

Answer: Certification must meet the Federal Election Commission 2002 Voluntary Voting Systems Standards as well as the requirements of the Election Assistance Commission Advisory 2005-004.

Question: **Has the state scheduled certain times for the examination and certification of election systems by the vendors.**

Answer: Scheduling and method of certification for use in West Virginia is found in Attachment 1. However, in order to constitute as a winning Vendor, certification of the current voting system as described in the RFP must be certified by the West Virginia State Election Commission. The state will meet all requirements found in this section of West Virginia Code.

Question: **RFP p. 27 Section 4.04.06 Accuracy, Central Count Optical Scanner Item r. This item states a requirement for the system to "scan a ballot with up to 6 columns and 150 oval positions." Is the requirement actually for this very specific ballot format? If the requirement is to meet some other need, please clarify.**

Answer: The requirement is a minimum that must be met. The central count optical scanner must be able to scan at the least 6 columns and 150 oval positions.

Question: **RFP p. 32, Section 4.04.11 Portability/Ease of Use, Central Count Optical Scan Item a. Please define "voting unit" as it relates to central count systems.**

Answer: The term "voting unit" as it relates to this subsection is specifically referencing the central county optical scan machine and no other device.

Question: **RFP p. 32, Section 4.04.11 Portability Ease of Use, Central Count Scan, Item b. This item refers to equipment used in polling places and Election Day. Please clarify the use of central count systems in this manner.**

Answer: The reference to polling place was incorrect in this section. All terms designated "polling place" for this specific subsection should clearly read "central count location."

Question: RFP p. 33, Section 4.04.13 Absentee/Early Voting, DRE voting systems, Item d. This item requires the system to "produce and record results from optical scan ballots if applicable." Please clarify the functionality desired. Is the intent for the DRE components to produce and record optical scan ballots?

Answer: The DRE system must have the ability to communicate, record, and produce results in conjunction with the optical scan system.

Question: RFP p. 39, Section 4.06 Deliverables, Election Administration Support, Item d. Please define "completed counties." Is it the State's intent for the selected Vendor to provide all programming and ballot set up for all counties during the term of the contract?

Answer: If the system requires the programming to be done by the vendor then those costs must be included in the bid.

Question: RFP p. 43 Section 5.04 Scored Requirements, Item a.xxii. Please clarify the functionality desired. Is the intent for the DRE voting device to read a marked ballot?

Answer: It is not a requirement that the DRE device read a marked ballot. The devices must be integrated as such that the results will be produces by the EMS for both systems as a whole.

Question: RFP p. 48, Section 5.07 Cost Proposal, Programming Costs. Is it the State's intent for the selected Vendor to provide all programming an ballot set up for all counties during the term of the contract?

Answer: If the system requires the programming to be done by the vendor then those costs must be included in the bid.

Question: Will the State accept a proposal for only DRE and unassisted DRE voting devices (excluding the central count optical scan system)?

Answer: The bid must include all requirements of the RFP which includes the DREs, unassisted DREs, and the central count optical scan units.

Question: Will the State make available a Word version of the RFP?

Answer: Please contact the West Virginia Purchasing Division for applicable formats that the RFP is available.

Question: Page 15 of the RFP refers to a five year contract with the option for renewal for three one-year option years. To be clear, are these options years within, or beyond the five-year contract?

Answer: The three one-year option years are beyond the five-year contract.

Question: Page 17 of the RFP states that 10% of all service and software invoices will be held and released thirty days after completion of the project. Please define what constitutes "completion of the contract."

Answer: The project is completed once all requirements in Section 4.06 are completed. As the warranty period is ongoing, the funds will be dispersed once the State is satisfied that the Vendor will meet all warranty requirements specified.

Question: With regard to election administration support, and programming services specifically: Page 20 of the RFP stipulates that the vendor must provide, during the term of the contract (which we understand to be 5 years) all election programming at the discretion of the county; Page 39, which defines the Election Administration Support, includes pre-election programming during the contract period; Page 46 instructs the vendor to meet the deadline for scope of work (see section 4.01) which includes provision of programming services for 2006 and beyond;

a. Can you please clarify the programming services to be provided by the vendor, and for how long, and

b. Please clarify the specific elections the State expects the vendor to support during the contract term, and please indicate if special elections are included and if so, how many?

Answer: The programming support will be determined based on the units bid and the capability of election officials to be trained for programming. If the programming is vendor specific and must be completed by the vendor, all programming costs should be included for all elections. In determining the amount of elections to calculate for, the State does suggest that in the five years, there will be two statewide election cycles, and at the minimum of two additional special elections. As municipal election costs are funded by municipalities, it is our assumption that that expenditure will be placed on the municipalities as it has in the past.

Question: Vendors were instructed, in the RFP, to refer to the state HAVA plan. That plan currently refers only to "Direct recording Electronic DRE Devices" and limits state HAVA funding to "The purchase of DRE

voting equipment." Does the state have plans to modify the HAVA plan to include additional devices?

Answer: It is the State's intentions to meet all requirements set forth by the requirement of the Help America Vote Act, including the submission of state plans.

Question: While the RFP requires ITA certification, there are no specific reference to either the 1990 or the 2002 standards. Which voting system standards must a vendor's election software and hardware meet?

Answer: Certification must meet the Federal Election Commission 2002 Voluntary Voting Systems Standards as well as the requirements of the Election Assistance Commission Advisory 2005-004.

Question: Section 4.04.03 of the RFP refers to the compliance with EAC Voting System Standards. At present, there are no EAC voting system standards. Are we correct to assume that the State is referring to the current 2002 voting system standards?

Answer: No, the requirement to be in compliance with EAC Voting System Standards is to include all current standards and any additional mandatory standards that are presented continuing for 5 years after the award of the contract.

Question: Page 38 requires that each voting devise must "Adhere to the certification requirements set forth by the State of West Virginia (see Appendix A) and HAVA." Must vendors submit written verification stating how their propose systems meet the specific statutory requirements in Appendix A?

Answer: No, however, the system must meet the certification requirements set for in West Virginia law which is included in Attachment A.

Question: The RFP Minimum Requirements and Scored Requirements did not appear to specifically require the Vendor to conform to the West Virginia Election Code. Is this interpretation correct?

Answer: Please refer to Section 4.04.04.

Question: Page 42 (a) (i) of the RFP asks if the Vendor's DRE voting device produces " a paper ballot"; can you please clarify the difference between this capability and the voter verifiable paper record reference in (a) (ii)?

Answer: The paper ballot as reference to in (a) (i) on page 42 is as such and may not be voter verifiable.

Question: Can a Ballot Marking Device that meets the West Virginia Code and is designed to serve the disabled voter be proposed as an alternate unassisted DRE voting device?

Answer: Yes

Question: From page 21 of the RFP, please define/clarify the statement "Complete Statewide Election System Implementation by 12/31/2005".

Answer: All items required hardware and software, in the RFP must be delivered by 12/31/2005.

Question: Attachment 2: Cost Proposal Template. the forms only allow for a one-to-one ration of peripheral devices to each voting unit. For those instances where the ratio is not one-to-one, or only a single peripheral device is required to make the system complete)ex. one unit per County), does the State want these items listed as part of the explanations, details, or notes as discussed in Section 5.07?

Answer: Any extra peripheral device must be discussed in Section 5.07.

Question: Section 5.07 of the cost instructions states that the EMS and ERS costs must reflect all 55 counties and a central State installation. However the cost proposal template only ask for the cost of 50 counties and a central State license. Which guidelines would the State prefer be used for the pricing of these software items?

Answer: As all 55 counties will be required to have at the minimum of one unassisted accessible DRE per polling place, it is a requirement that each county has the EMS.

Question: Please clarify where in the pricing forms we reflect the cost of election administration support services such as project management, on-site technical support, poll worker training and EMS training.

Answer: All administrative costs for support services should be reflected in the unit price of each machine.

Question: Section 4.04.08 pertaining to a Central Count OS reader, the requirement reads: "provide for data storage to transmit data electronically with other systems." What is "data storage" and what are the other systems referred to?

Answer: Data storage is referencing the process that data is stored with the ability to be transferred to another program to merge election results. The other systems refer to the DREs.

Question: Section 4.04.06 section j: Control logic and data processing methods to detect errors and provide correction method. Please explain more clearly.

Answer: All DRE voting systems must provide control logic and data processing methods to detect errors and provide a correction method.

Question: Section 4.04.06 section K: Accommodate multi-member districts where multiple votes are cast for more than one candidate in the same election. Please explain this more clearly and give an example if possible.

Answer: A race in which a voter must choose more than one candidate within the district at the same election. *Example: In some multi-member House of Delegate districts, voters must choose more than one candidate at any one election.*

Question: What is the minimum amount of technical points required to move beyond the technical portion of the evaluation.

Answer: 70 percent of the 65 technical points available must be retained in order to continue through to the cost evaluation.

Question: When must the current version of the voting system be approved by the West Virginia State Election Commission?

Answer: As soon as possible. In order to constitute as a winning Vendor, certification must be received by the West Virginia State Election Commission. It is strongly encouraged that each bidder receive state certification immediately.

[FR Doc. 06–391 Filed 1–31–06; 8:45 am]

BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–92–001]

ANR Pipeline Company; Notice of Compliance Filing

January 25, 2006.

Take notice that on January 20, 2006, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on the filing, to become effective on February 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1260 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–179–000]

Duke Energy Marketing America, LLC, CenterPoint Energy Gas Transmission Company, and Kern River Gas Transmission Company; Notice of Joint Petition for Expedited Grant of Limited Waivers

January 25, 2006.

Take notice that on January 20, 2006, Duke Energy Marketing America, LLC (DEMA), CenterPoint Energy Gas Transmission Company (CEGT) and Kern River Gas Transmission Company (Kern River) tendered for filing a Joint Petition for Expedited Grant of Limited Waivers.

DEMA, CEGT and Kern River petition the Commission for a grant of a limited waiver, to the extent required, of (i) the Commission's Order No. 636–A policy regarding the ''tying'' of non-jurisdictional gas transmission contracts to released transportation capacity, (ii) the Commission's maximum rate cap on released capacity, and (iii) the Commission's policy prohibiting the ''permanent'' release of a temporary capacity release transaction, and (iv) the applicable capacity release tariff provisions of CEGT and Kern River. The requested waivers will enable the petitioners to effectuate the permanent transfer of one of DEMA's portfolios of Commission-regulated transportation capacity and associated upstream Canadian pipeline capacity DEMA's Prearranged Replacement Shippers or to some other third-party replacement shipper who may prevail in the capacity release bidding process.

DEMA, CEGT and Kern River states that copies of the filing has been served on their jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time February 1, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1235 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–179–000]

Duke Energy Marketing America, LLC, CenterPoint Energy Gas Transmission Company, and Kern River Gas Transmission Company; Notice of Joint Petition For Expedited Grant of Limited Waivers

January 25, 2006.

Take notice that on January 20, 2006, Duke Energy Marketing America, LLC (DEMA), CenterPoint Energy Gas Transmission Company (CEGT) and Kern River Gas Transmission Company (Kern River) tendered for filing a Joint Petition for Expedited Grant of Limited Waivers.

DEMA, CEGT and Kern River states that copies of the filing has been served on jurisdictional customers and upon affected state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 1, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1258 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–51–000]

East Tennessee Natural Gas, LLC; Notice of Request Under Blanket Authorization

January 24, 2006.

Take notice that on January 19, 2006, East Tennessee Natural Gas, LLC (East Tennessee), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP06–51–000, an application pursuant to sections 157.205, 157.208, and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, for authorization to acquire approximately 33 miles of 10-inch diameter pipeline (New Facilities) currently owned by Duke Energy Gas Services, LLC (DEGS), under East Tennessee's blanket certificate issued in Docket No. CP82–412–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

East Tennessee states that it proposes to acquire the New Facilities from DEGS and to operate the pipeline as a jurisdictional transmission pipeline from Lee County, Virginia, to an interconnection with East Tennessee's Hawkins County lateral in Rogersville, Tennessee. East Tennessee also states that it would not perform any construction in connection with its purchase of the New Facilities. East Tennessee states that it would purchase the New Facilities from DEGS at a price equivalent to their net book value at the time of closing, estimated at $8,794,217.

Any questions concerning this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, East Tennessee Natural Gas, LLC, P.O. Box 1642, Houston, Texas 77251–1642; telephone 713–627–5113 or facsimile 713–627–5947.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERC OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1236 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL04–134–004 and EL05–15–006]

Entergy Arkansas, Inc.; Notice of Compliance Filing

January 24, 2006.

Take notice that on January 18, 2006, Entergy Arkansas, Inc. (EAI) reports that no refunds were required under the settlement as directed by a Commission Order issued on November 30, 2005, because the New Power Coordination and Interchange Agreement between EAI and the Arkansas Cities did not take effect until January 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1238 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–414–003]

Entrega Gas Pipeline LLC; Notice of Filing of Revised Tariff Sheets

January 25, 2006.

Take notice that on December 13, 2005, Entrega Gas Pipeline LLC (Entrega) filed revised tariff sheets to its proposed FERC Gas Tariff, Original Volume 1, in response to shipper concerns with respect to Entrega's proposed tariff provisions relating to operational sales and purchases of gas. Entrega states that its proposed tariff was filed in compliance with Ordering Paragraph (B)(4) of the order issuing certificates, issued by the Commission on August 9, 2005 in the captioned docket.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 8, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1261 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–180–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 25, 2006.

Take notice that on January 20, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, First Revised Sheet No. 30, to become effective February 20, 2006.

GTN states that a copy of this filing has been served on its jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1259 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–138–001]

Gulf States Transmission Corporation; Notice of Compliance Filing

January 25, 2006.

Take notice that on January 20, 2006, Gulf States Transmission Corporation (Gulf States) tendered for filing pursuant to Commission Order issued, January 5, 2006, as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 81 to become effective January 31, 2006.

Gulf States states that copies of this filing are being served on all of its customers and applicable state regulatory agencies.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1255 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–221–009]

High Island Offshore System L.L.C.; Notice of Compliance Filing

January 25, 2006.

Take notice that on January 19, 2006, High Island Offshore System L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets:

Substitute Third Revised Sheet No. 10
Fourth Revised Sheet No. 10

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1254 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–177–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change in FERC Gas Tariff

January 25, 2006.

Take notice that on January 20, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheet to be effective on March 21, 2006:

Fifth Revised Sheet No. 1
Original Sheet No. 5A
Third Revised Sheet No. 33
First Revised Sheet No. 36A
Second Revised Sheet No. 39
Original Sheet No. 39A
Original Sheet No. 39B
Original Sheet No. 39C
Original Sheet No. 39D
Original Sheet No. 39E
Original Sheet No. 39F
Original Sheet No. 39G
Original Sheet No. 39H
Original Sheet No. 39I
Original Sheet No. 39J
Second Revised Sheet No. 40
Second Revised Sheet No. 42
Fifth Revised Sheet No. 45
First Revised Sheet No. 49A
Fifth Revised Sheet No. 50A
Fifth Revised Sheet No. 50B
Eighth Revised Sheet No. 51
Fourth Revised Sheet No. 52
Second Revised Sheet No. 53
Fourth Revised Sheet No. 54
Seventh Revised Sheet No. 55
Second Revised Sheet No. 58A
Ninth Revised Sheet No. 59
Third Revised Sheet No. 59A
Second Revised Sheet No. 60E
Third Revised Sheet No. 65
First Revised Sheet No. 65A
Third Revised Sheet No. 68
Fourth Revised Sheet No. 75
First Revised Sheet No. 75A
Second Revised Sheet No. 79A
Second Revised Sheet No. 80
Ninth Revised Sheet No. 118
Third Revised Sheet No. 121
Fourth Revised Sheet No. 123
Third Revised Sheet No. 178
Original Sheet No. 178A
Original Sheet No. 178B
Original Sheet No. 178C
Original Sheet No. 178D
Original Sheet No. 178E
Original Sheet No. 178F
Original Sheet No. 178G
Eighth Revised Sheet No. 181
Seventh Revised Sheet No. 184
Fifth Revised Sheet No. 190
Fourth Revised Sheet No. 192

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1256 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2027–000]

Midwest Energy, Inc.; Notice of Filing

January 24, 2006.

Take notice that on August 1, 2005, Midwest Energy, Inc., submitted for filing a market power report pursuant to the Commission's Order issued May 31, 2005.

Midwest Energy, Inc., states that copies of this filing were served on the official service list as well as Kansas Corporation Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1239 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–178–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 25, 2006.

Take notice that on January 20, 2006, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets listed in the Appendix to the filing, to become effective on February 20, 2006.

Mojave states that it is filing to update its Tariff to provide for commonly used contract provisions such as pressure commitments and evergreen clauses as well as to modify its Pro Forma Service Agreements to provide for circumstances where a shipper requests varying contract quantities, different service points or rates, or where precedent conditions are required for expansions. In addition, Mojave is adding provisions to the Tariff to specify the types of discounts that it may offer as well as to request negotiated rate authority.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1257 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–66–000]

NRG Energy, Inc. and Dynegy Inc.; Notice of Filing

January 24, 2006.

Take notice that on January 20, 2006, NRG Energy, Inc. (NRG) and Dynegy Inc. (Dynegy) on behalf of themselves and certain of their public utility subsidiaries (collectively, Applicants), submitted an application pursuant to section 203 of the Federal Power Act requesting all authorizations necessary in connection with: (1) The acquisition by NRG of Dynegy's 50 percent ownership interest in WCP (Generation) Holdings LLC, (2) the acquisition by Dynegy of NRG's 50 percent ownership interest in Rocky Road Power LLC, and (3) a corporate reorganization of the internal ownership structure through which Rocky Road Power LLC is held following its indirect acquisition by Dynegy.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 10, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1237 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–50–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Application

January 24, 2006.

Take notice that on January 18, 2006, Panhandle Eastern Pipe Line Company, LP (Panhandle), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP06–50–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), for authorization to: (1) Install a new receipt point with Northern Natural Gas Company (Northern), (2) replace and construct new minor facilities to reconfigure a portion of Panhandle's Liberal 24-inch 100-Line to add the capability of bi-directional flow, (3) relocate certain form and city tap facilities; and (4) install metering and appurtenant facilities, located in Seward, Meade, Clark, Ford and Kiowa Counties, Kansas, all as more fully set forth in the request which is on file with Commission and open to public inspection.

Specifically, Panhandle proposes to: (1) Relocate 80 farm tap customers and 8 city-gate delivery point customers form Panhandle's 100-Line to Panhandle's existing 200-Line and 300-Line, (2) replace an existing launcher with a new 24-inch bi-directional launcher/receiver at the Liberal Compressor Station, (3) install two new 24-inch bi-directional launcher/receiver facilities, including a 12-inch ultrasonic meter skid and appurtenant facilities at the existing Mullinville Receipt Meter location; and (4) install a new 24-inch tee, 24-inch valve, and connecting piping at the Mullinville Receipt Meter location to the outlet of the new meter skid. The cost of the proposed project is estimated to be $4.96 million.

Any questions regarding this application should be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, at (713) 989–7000, Panhandle Eastern Pipe Line Company, LP, 5444 Westheimer Road, Houston, Texas 77056.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 14, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1243 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–155]

Tennessee Gas Pipeline Company; Notice of Termination of Negotiated Rate Arrangement

January 25, 2006.

Take notice that on January 12, 2005, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a notice of termination of a negotiated rate arrangement between Tennessee and United States Gypsum Company (United States Gypsum) to become effective June 1, 2005.

Tennessee states that this filing serves as notice of termination of a negotiated rate arrangement between Tennessee and United States Gypsum because United States Gypsum successfully bid in an open season in May 2005 a request to change the primary delivery point of its existing Firm Transportation Agreement and to change the rate from a negotiated rate to the applicable Tennessee Maximum Tariff Demand and Commodity rates.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1248 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–10–000, EY06–7–000, and TS06–2–000]

Standards of Conduct for Transmission Providers and Venice Gathering System, L.L.C.; Notice Granting Extension of the Waiver of Posting and Recordkeeping Requirements

January 25, 2006.

On December 30, 2005, Venice Gathering System, L.L.C. (Venice Gathering) filed to seek an extension of the emergency waiver of § 358.4(a)(2) of the Commission's regulations, 18 CFR 358.4(a)(2) (2005). Venice Gathering requests an extension of that waiver as it relates to section 358.4(a)(2) of the Commission's regulations until March 31, 2006 or the date on which the Venice Gathering system has returned to full pre-hurricane operation.

On the same date, in a separate filing, Venice Gathering filed to seek an extension of § 358.4(b)(3)(iv) of the Commission's regulations, 18 CFR 358.4(b)(3)(iv) (2005) with respect to the deadline for updating the information contained in its posted employee organizational charts and its posted job descriptions. Venice Gathering requests an extension of that waiver as it relates to § 358.4(b)(3)(iv) of the Commission's regulations until January 31, 2006.

Venice owns and operates a FERC-jurisdictional natural gas gathering and transmission system consisting of (1) A twenty-six-inch mainline, extending from the South Timbalier Block 151 compressor platform in the Gulf of Mexico to the Venice Plant, (2) a twenty-four-inch mainline extending from the South Timbaliler Block 151 compressor platform to the West Delta Block 79A platform, and (3) a twenty-two-inch mainline extending from the West Delta Block 79A platform to the Venice Plant located near Venice, Louisiana. In its initial request for exemption, Venice stated that Hurricane Katrina caused extensive damage to processing plants and offshore pipelines located along the Louisiana Gulf Coast, including the Venice Plant and the Venice Gathering system.

In its motions for an extension, Venice explains that restoration work has proceeded diligently at the Venice Gathering and Venice Plant facilities. Venice notes, however, that this restoration work is expected to continue well into 2006. Venice states that these extensions are needed to permit all employees within its parent company who have expertise and availability to assist in the restoration efforts to engage in detailed communications about the status of the restoration efforts and to coordinate joint operations and repair work, without regard to their designations under Order No. 2004 and without the requirement to log each individual deviation from the Standards of Conduct.

In its January 18, 2006 supplement to the motions for an extension, Venice Gathering clarifies that limited quantities of gas are flowing to Trunkline Gas Company LLC through two new interconnections. Venice Gathering clarifies, further, that although the Venice Plant is not currently operational and is not expected to become operational for some time, it is working with Venice Energy Services Company, L.L.C. and with the appropriate downstream pipelines to allow gas to flow in its pre-hurricane direction without being processed in the Venice Plant.

Venice Gathering states that, in order to enable it to take all appropriate steps within its control to restore its system to full, pre-hurricane operations, it is necessary that the waiver of the recording and posting requirements of section 358.4(a)(2) of the Commission's regulations be extended. Venice Gathering states, further, that due to the significant Targa resources devoted to the restoration project, it is left with limited resources to carry out revisions to its website postings related to its recent change in control after the Targa acquisition.

The Commission initially granted a temporary emergency waiver of §§ 358.4(a)(2) and 358.4(b)(3)(iv) of the Commission's regulations in a notice issued on November 28, 2005 in order to allow Venice Gathering to proceed with the restoration work on its pipeline facilities and on the Venice Gathering Processing Plant necessitated by Hurricane Katrina. The Commission granted the waiver until the earlier of the end of the gas day on December 31, 2005, or the date on which the Venice Gathering system returned to full pre-hurricane operation, without prejudice to Venice Gathering requesting a further extension, if necessary.

The Commission notes that Venice issued a notice on its Internet website indicating that it estimates the repairs will be completed by February 1, 2006.[1] The Commission also notes that Venice asserts that it is able to make nominations for gas at two receipt points. The Commission, therefore, will grant Venice Gathering an extension of waiver of the otherwise applicable requirements of section 358.4(a)(2) to record and post a log of emergency-related deviations from the Standards of Conduct until the end of the gas day on January 31, 2006. This waiver extension is granted without prejudice to Venice requesting a further extension, if necessary, with specific justification for such a request.

The Commission also grants an extension for the waiver of the recording and posting requirements of section 358.4(b)(3)(iv) requirements to post updated information on organizational changes resulting from the acquisition by Targa Resources, Inc. (Targa) of Venice Gathering's managing member, Dynegy Midstream Services, Limited Partnership (Dynegy Midstream) until January 31, 2006.

[1] *See http://www.venicegathering.com/Notices/notice010406htm* (January 20, 2006).

The Commission directs Venice Gathering to ensure that the employees affected by this waiver observe the no-conduit prohibition in the Standards of Conduct, 18 CFR 358.5(b)(7) (2005).

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1253 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 24, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–498–000.
Applicants: Idaho Power Company.
Description: Idaho Power Co. requests permission to withdraw its 1/13/06 compliance filing and replace with new tariffs sheets in compliance with Order 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0008.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–499–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, LLC submits revisions to the PJM OATT to comply with Order 661 and 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0009.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–500–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co.'s revisions to the Wholesale Distribution Access Tariff, which includes its approved WDAT Large Generator Interconnection Procedures in compliance with Order 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0010.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–501–000.
Applicants: Consolidated Edison Company of NY, Inc.
Description: Consolidated Edison Company of New York, Inc. submits notice of the termination of its FERC Electric Rate Schedule No. 112 with New York State Electric & Gas Corp.
Filed Date: 01/18/2006.
Accession Number: 20060123–0011.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–502–000.
Applicants: Aquila, Inc.
Description: Aquila, Inc. on behalf of its four operating divisions Aquila Networks-MPS et al. submits revised tariff sheets for each of Aquila's OATT.
Filed Date: 01/18/2006.
Accession Number: 20060123–0012.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–503–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy Inc. submits pro forma revisions to Annex A, in compliance with Order 661 and 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0013.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–504–000.
Applicants: Black Hills Power, Inc.
Description: Black Hills Power Inc., on behalf of itself, Basin Electric Power Cooperative et al. submits First Revised Sheet No. 17 et al., Original Volume No. 1 of the OATT in compliance with Order 661.
Filed Date: 01/18/2006.
Accession Number: 20060123–0014.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–505–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc. on behalf of Entergy Operating Companies submits amended Original Sheet 352J et al. that integrate the additional appendices and revisions to those appendices etc., pursuant to Order 661 & 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0034.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–506–000.
Applicants: New York Independent System Operator, Inc., New York Transmission Owners.
Description: The New York Independent System Operator, Inc., and the New York Transmission Owners submit a joint compliance filing in Order 661.
Filed Date: 01/18/2006.
Accession Number: 20060123–0017.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–507–000.
Applicants: ISO New England Inc.
Description: ISO New England, Inc., et al., submits 1st Revised Sheet 5104 et al. of the ISO OATT in compliance with Order 661.
Filed Date: 01/18/2006.
Accession Number: 20060123–0018.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–508–000.
Applicants: Southern Company Services, Inc.
Description: Alabama Power Co. & Georgia Power Co. et al., submit revised tariff sheets pursuant to FERC's Order 2006–A and Order 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0019.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–509–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits an unexecuted interconnection service agreement among PJM, Boone Heritage Wind Farm LLC, and Commonwealth Edison Co.
Filed Date: 01/18/2006.
Accession Number: 20060123–0016.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–510–000.
Applicants: Energy Endeavors LLC.
Description: Energy Endeavors LC submits its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 01/18/2006.
Accession Number: 20060123–0032.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–511–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Co. submits revisions to its OATT revising its Standard Large Generator Interconnection Agreement etc., in compliance with Order 661 and 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0030.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–512–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc., submits changes to its OATT, revising its Standard Large Generator Interconnection Agreement etc., in compliance with Order 661 and 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0029.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–513–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corp., submits Original Sheets 293–298, to its OATT in compliance with Order 661 and 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060123–0028.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–514–000.
Applicants: Ohio Valley Electric Corporation.
Description: Ohio Valley Electric Corp., submits new and First Revised Sheet 164 et al. to its OATT, adding to the Large Generator Interconnection Procedures and Agreement without modification.
Filed Date: 01/18/2006.
Accession Number: 20060123–0027.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–524–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits an amended long-term Standard Large Generator Interconnection Agreement in compliance with Order 661 and 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060124–0078
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–526–000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Co. submits Tariff Sheet 408–408D to incorporate the new rules into its OATT in compliance with Order 661 & 661–A.
Filed Date: 01/18/2006.
Accession Number: 20060124–0080.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER97–512–003.
Applicants: A'Lones Group, Inc.
Description: Tri Annual Market Analysis of A'Lones Group, Inc. submits updated market power analysis.
Filed Date: 12/02/2005.
Accession Number: 20051202–5003.
Comment Date: 5 p.m. Eastern Time on Friday, February 3, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–1246 Filed 1–31–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 25, 2006.

Take notice that the Commission received the following electric rate filings:
011; ER99–754–013; ER98–1734–011; ER01–1919–008; ER99–2404–008; ER01–513–011; ER01–513–012; ER01–513–013; ER01–513–014; ER01–513–015.

Applicants: Exelon Generating Company, LLC; AmerGen Energy Company, LLC; Commonwealth Edison Company; Exelon Energy Company; Exelon New England Power Marketing, L.P.; Exelon Edgar, LLC; Exelon West Medway, LLC; Exelon Wyman, LLC; Exelon New Boston, LLC; Exelon Framingham, LLC.
Description: Exelon Entities submit a compliance filing in response to the 12/29/05 Commission letter.
Filed Date: 01/19/2006.
Accession Number: 20060119–5081.
Comment Date: 5 p.m. Eastern Time on Thursday, February 9, 2006.

Docket Numbers: ER03–1079–006; ER02–47–006; ER95–216–026; ER03–725–006; ER02–309–006; ER02–1016–004; EL05–83–001.
Applicants: Aquila, Inc.; Aquila Long Term, Inc.; Acquila Merchant Services, Inc.; Aquila Piatt County L.L.C.; MEP Clarksdale Power, LLC; MEP Flora Power, LLC.
Description: Aquila, Inc., et al., submit amendment to First Revised Sheet No. 2 et al., FERC Electric Tariff, First Revised Volume No. 1 for Aquila Long Term, AMS, Piatt County Clarksdale, and MEP Flora in compliance with FERC's 12/13/05 Order.
Filed Date: 01/12/2006.
Accession Number: 20060123–0026.
Comment Date: 5 p.m. Eastern Time on Thursday, February 2, 2006.

Docket Numbers: ER05–739–001.
Applicants: Yoakum Electric Generating Cooperative.
Description: Withdrawal by Yoakum Electric Generating Cooperative, Inc., of Application for market based rate authorization.
Filed Date: 12/15/2005.
Accession Number: 20051215–5032.
Comment Date: 5 p.m. Eastern Time on Monday, February 6, 2006.

Docket Numbers: ER06–453–000.
Applicants: Brascan Power St. Lawrence River LLC.
Description: Brascan Power St. Lawrence River LLC's notice of cancellation of terminating market-based tariff filed under ER05–98.
Filed Date: 01/04/2006.
Accession Number: 20060109–0102.
Comment Date: 5 p.m. Eastern Time on Monday, February 6, 2006.

Docket Numbers: ER06–515–000.
Applicants: Mirant Peaker, LLC.
Description: Mirant Peaker, LLC submits notice to cancel its FERC Electric Tariff, First Revised Volume No. 1, effective 1/3/06 pursuant to Order 614.
Filed Date: 01/18/2006.
Accession Number: 20060123–0024.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 8, 2006.

Docket Numbers: ER06–516–000.
Applicants: TECO EnergySource, Inc.
Description: TECO EnergySource, Inc., submits an amended notice of cancellation terminating its market-based electric tariff submitted 12/01/05.
Filed Date: 01/18/2006.

Accession Number: 20060124–0071.

Comment Date: 5 p.m. Eastern Time on Friday February 3, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1262 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 25, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–3251–011; ER99–754–013; ER98–1734–011; ER01–1919–008; ER99–2404–008; ER01–513–011; ER01–513–012; ER01–513–013; ER01–513–014; ER01–513–015.

Applicants: Exelon Generating Company, LLC; AmerGen Energy Company, LLC; Commonwealth Edison Company; Exelon Energy Company; Exelon New England Power Marketing, L.P.; Exelon Edgar, LLC; Exelon West Medway, LLC; Exelon Wyman, LLC; Exelon New Boston, LLC; Exelon Framingham, LLC.

Description: Exelon Entities submit a compliance filing in response to the 12/29/05 Commission letter.

Filed Date: 01/19/2006.

Accession Number: 20060119–5081.

Comment Date: 5 p.m. eastern time on Thursday, February 9, 2006.

Docket Numbers: ER03–1079–006; ER02–47–006; ER95–216–026; ER03–725–006; ER02–309–006; ER02–1016–004; EL05–83–001.

Applicants: Aquila, Inc.; Aquila Long Term, Inc.; Acquila Merchant Services, Inc; Aquila Piatt County L.L.C.; MEP Clarksdale Power, LLC; MEP Flora Power, LLC.

Description: Aquila, Inc et al. submit amendment to First Revised Sheet No. 2 et al., FERC Electric Tariff, First Revised Volume No. 1 for Aquila Long Term, AMS, Piatt County Clarksdale, & MEP Flora in compliance with FERC's 12/13/05 Order.

Filed Date: 01/12/2006.

Accession Number: 20060123–0026.

Comment Date: 5 p.m. eastern time on Thursday, February 2, 2006.

Docket Numbers: ER05–739–001.

Applicants: Yoakum Electric Generating Cooperative.

Description: Withdrawal by Yoakum Electric Generating Cooperative, Inc. of Application for market based rate authorization.

Filed Date: 12/15/2005.

Accession Number: 20051215–5032.

Comment Date: 5 p.m. eastern time on Monday, February 6, 2006.

Docket Numbers: ER06–453–000.

Applicants: Brascan Power St. Lawrence River LLC.

Description: Brascan Power St Lawrence River LLC's notice of cancellation of terminating market-based tariff filed under ER05–98.

Filed Date: 01/04/2006.

Accession Number: 20060109–0102.

Comment Date: 5 p.m. eastern time on Monday, February 6, 2006.

Docket Numbers: ER06–515–000.

Applicants: Mirant Peaker, LLC.

Description: Mirant Peaker, LLC submits notice to cancel its FERC Electric Tariff, First Revised Volume No. 1, effective 1/3/06 pursuant to Order 614.

Filed Date: 01/18/2006.

Accession Number: 20060123–0024.

Comment Date: 5 p.m. eastern time on Wednesday, February 8, 2006.

Docket Numbers: ER06–516–000.

Applicants: TECO EnergySource, Inc.

Description: TECO EnergySource, Inc submits an amended notice of cancellation terminating its market-based electric tariff submitted 12/01/05.

Filed Date: 01/18/2006.

Accession Number: 20060124–0071.

Comment Date: 5 p.m. eastern time on Friday February 3, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–1264 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1893–042 New Hampshire]

Public Service Company of New Hampshire; Notice of Availability of Environmental Assessment

January 24, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Merrimack River Project, located on the Merrimack River, in Merrimack and Hillsborough counties, New Hampshire, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Merrimack River Project No. 1893'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Steve Kartalia at (202) 502–6131.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1241 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 24, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12625–000.

c. *Date filed:* November 3, 2005.

d. *Applicant:* LOVE Bear Lake, Inc.

e. *Name of Project:* Rocky Point Hydroelectric Project.

f. *Location:* On the Bear River, in Bear Lake County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Ken Bain, President, LOVE Bear Lake, Inc., P.O. Box 61, Saint Charles, ID 83272, (208) 945–2380.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 2,700-foot-long, 90-foot-high rolled earth or rock filled dam, (2) a proposed impoundment with a surface area of 10,000 acres having a storage capacity of 300,000 acre-feet and a normal water surface elevation of 5,820 feet mean sea level, (3) a proposed powerhouse containing four generating units having a total installed capacity of 40-megawatts, (4) four proposed 5-mile-long, 12.5-kilovolt transmission lines, and (5) appurtenant facilities. The proposed project would have an average annual generation of 6.2 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license

application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1240 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 24, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Amendment of License.

b. *Project No:* 2685–021.

c. *Date Filed:* December 22, 2005.

d. *Applicant:* Power Authority of the State of New York.

e. *Name of Project:* Blenheim Gilboa Power Project.

f. *Location:* The project is located on the Schoharie Creek in Schoharie County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contacts:* Mr. John J. Suloway, Executive Director, Licensing Division, New York Power Authority, 123 Main Street, 9th Fl., White Plains, NY 10601, (914) 287–3971.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Hong Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov.*

j. *Deadline for filing comments and or motions:* February 24, 2006.

k. *Description of Request:* The licensee proposes to rehabilitate the four generating units of its Blenheim-Gilboa Pumped Storage Project, which would increase its generating capacity and efficiency. The rehabilitation of the existing four pump-turbine runners and possibly other components would increase the total generating capacity by 120 MW, and the maximum hydraulic capacity by about 3.5 to 10.35 percent. The licensee states the proposed modifications would increase the generating efficiency by about 7 percent, and would enhance the flexibility of the plant to meet peak demand.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application.

A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1242 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12608–000]

Alternatives Unlimited, Inc.; Notice Soliciting Scoping Comments

January 25, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: Exemption from Licensing.

b. Project No.: P–12608–000.

c. Date filed: August 15, 2005.

d. Applicant: Alternatives Unlimited, Inc.

e. Name of Project: Alternatives Hydro Power Project.

f. Location: On the Mumford River, in the Town of Northbridge, Worcester County, Massachusetts. The project would not use federal land.

g. Filed Pursuant to: Public Utility Regulatory Policies Act of 1978, 16 U.S.C. sections 2705 and 2708.

h. Applicant Contact: Kathleen D. Hervol. Beals and Thomas, Inc. Reservoir Corporate Center, 144 Turnpike Road (Route 9), Southborough, MA 01772–2104, (508) 366–0560.

i. FERC Contact: Stefanie Harris, (202) 502–6653 or *stefanie.harris@ferc.gov.*

j. Deadline for filing scoping comments: February 24, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The Alternatives Hydro Power Project would consist of: (1) The existing 127-foot-long by 15.5-foot-high Ring Shop Dam consisting of a concrete 9.5-foot-high spillway topped with 2.5-foot-high flashboards, a waste gate, and two inlet structures located at the north and south ends of the spillway, (2) an existing 1.3-acre reservoir enlarged to 2 acres with a normal full pond elevation of 285.1 feet above mean sea level, (3) a restored 8-foot-wide head gated intake structure, (4) a new 23-foot by 6-foot metal service platform (to be enclosed for a future powerhouse) located at the south side of the dam containing three generating units with a total installed capacity of 45 kilowatts; and (5) appurtenant facilities. The restored project would have an average annual generation of 340 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process: The Commission staff intends to prepare a single Environmental Assessment (EA) for the Alternatives Hydro Power Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff do not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1249 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

January 25, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12626–000.

c. *Date filed:* November 29, 2005.

d. *Applicant:* Northern Illinois Hydropower Corporation.

e. *Name of Project:* Dresden Island Hydroelectric Project.

f. *Location:* On the Illinois River, in Grundy, County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Damon Zdunich, Northern Illinois Hydropower Corporation, 801 Oakland Avenue, Joliet, IL 60435, (312) 320–1610, *dzdunich@gelbergroup.com.* The Dresden Island Lock and Dam is owned by the U.S. Army Corps of Engineers.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list

for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the Dresden Island Lock and Dam would consist of: (1) A proposed powerhouse having a total installed capacity of 18-megawatts, (2) a proposed 3-phase 34-kilovolt ¾ mile overhead transmission line, and (3) appurtenant facilities. The proposed project would have an average annual generation of 73,400,000 kilowatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1250 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Recreation Plan and Soliciting Comments, Motions To Intervene, and Protests

January 25, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of License.

b. Project No: 2157–166.

c. Date Filed: December 15, 2005.

d. Applicant: Public Utility District No. 1 of Snohomish County, Washington and the City of Everett.

e. Name of Project: Henry M. Jackson Project.

f. Location: The project is located on Sulton River, in Snohomish County, Washington. This project occupies about 1,939 acres of federal lands administered by the U.S. Forest Service.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. Applicant Contact: Mr. Clare Olivers, Public Utility District No. 1 of Snohomish County, 2320 California Street, P.O. Box 1107, Everett, WA 98206, (425) 783–8606.

i. FERC Contacts: Any questions on this notice should be addressed to Mr. Jon Cofrancesco at (202) 502–8951, or e-mail address: *jon.cofrancesco@ferc.gov*.

j. Deadline for filing comments and or motions: February 14, 2006.

All documents (original and eight copies) should be filed with: Ms.

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2157–166) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. Description of the Application: On December 15, 2005, Public Utility District No. 1 of Snohomish County and the City of Everett (co-licensees) filed an application to amend the project's recreation plan. The co-licensees have implemented security measures to protect project hydroelectric facilities, including gate closures across Culmback Dam Road, immediately north and south of the dam. These closures prevent all public access across the dam, including access to project recreation area No. 6 (a scenic overlook adjacent to the dam) and access from the south to recreation areas Nos. 7 and 8, located on the north side of the project reservoir. Pedestrian access to recreation areas Nos. 7 and 8 remains available via a road along northwest side of the reservoir. The co-licensees' application reflects the proposed public access restrictions to the above recreation areas.

l. Location of the Application: The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, D.C. 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnLineSupport@ferc.gov* or toll free (866) 208 3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1251 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

January 25, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 516–417.

c. *Date Filed:* January 10, 2006.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Project.

f. *Location:* Lake Murray in Lexington County, South Carolina. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Randolph R. Mahan, Manager, Environmental Programs and Special Projects, SCANA Services, Inc., Columbia, SC, 29218; (803) 217–9538.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674.

j. *Deadline for filing comments and or motions:* February 27, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–516–417) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* South Carolina Electric & Gas Company is requesting Commission authorization to issue a permit to LAB Investors, L.L.C. for the construction of a community docking facility which includes a 100-slip marina, a launching facility with courtesy dock, and parking. The 100-slip marina will require the excavation of approximately 9,200 cubic yards (c.y.) of material from 2.01 acres. Construction of the launching facility entails the placement of approximately 400 c.y. of topsoil, 300 c.y. of gravel, and 35 c.y. of concrete covering 0.04 acre. The facility will not provide fuel services or pump-out facilities as boats with marine sanitary devices will not be allowed to be berthed at the docks.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov.* For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments

filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–1252 Filed 1–31–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2005–0008, FRL–8026–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emergency Planning and Release Notification Requirements Under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal), EPA ICR Number 1395.06, OMB Control Number 2050–0092

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 3, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2005–0008, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8019; fax number: 202–564–2620; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 12, 2005 (70 FR 53793), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2005–0008, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal).

ICR number: EPA ICR No. 1395.06, OMB Control No. 2050–0092.

ICR Status: This ICR is scheduled to expire on February 28, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The authority for these requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) that the facility is subject to emergency planning. This activity has been completed; this ICR covers only new facilities that are subject to this requirement. Section 303 requires the local emergency planning committees (LEPCs) to prepare emergency plans for facilities that are subject to section 302. This activity has been also completed; this ICR only covers any updates needed for these emergency response plans. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance

(EHS). This ICR also covers the notification and the written follow-up required under this section.

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

Burden Statement: As explained in the supporting statement, EPA does not expect any new facilities to come into compliance during this ICR period. This ICR only covers periodic reporting or updates of information submitted previously by existing facilities. The average reporting burden for a limited number of existing facilities to inform the LEPC of any changes at the facility that may affect emergency planning is 1.50 hours. The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are no record keeping requirements for facilities under EPCRA Sections 302–304. The total burden to facilities over three years is 229,473 hours at a cost of $11.1 million, and the annual burden to facilities is 76,491 hours $3.7 million.

The average burden for emergency planning activities is 21 hours per plan for LEPCs, and 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual record keeping burden of 10 hours. The total burden to SERCs and LEPCs over three years is 320,568 hours at a cost of $8.1 million. The annual LEPC and SERC burden is 106,856 hours and $2.7 million.

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 which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR part 355, Appendix A and those which have a release of any of the EHS above a reportable quantity. Entities more likely to be affected by this action may include chemical manufacturers, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Estimated Number of Respondents: 84,815.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 183,347.

Estimated Total Annual Cost: $6,428,000, includes $0 annualized capital costs, $27,000 annual O&M costs, and $6,401,000 annual labor costs.

Changes in the Estimates: The estimated average annual burden for both the affected facilities and the SERCs and LEPC has decreased from the previous ICR by 29,113 hours. This includes a decrease to facilities from 88,188 hours per year under the previous ICR to 76,491 hours per year under this ICR. The estimated burden to affected facilities has declined from the previous ICR because no new facilities will be subject to the regulations during this ICR period. Therefore, the burden or costs were not calculated for compliance for new facilities. Labor costs have risen for currently covered facilities because we used the most recent wage rates (March 2005). The estimated average burden for SERCs and LEPCs decreased from 124,272 hours to 106,856 hours because the number of plans reviewed by SERCs annually has been reduced based on information from states that indicate that the level of review has declined from the early years of the program.

Dated: January 20, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–1351 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0086; FRL–8027–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Notice of Pesticide Registration by States To Meet a Special Local Need Under FIFRA Section 24(c), EPA ICR Number 0595.09, OMB Control Number 2070–0055

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before March 3, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2005–0086, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *opp.ncic@epa.gov,* or by mail to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division, Office of Pesticide Programs, 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–5454; fax number: 703–305–5884; e-mail address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 20, 2005, (70 FR 20538), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment on this ICR during the 60-day comment period and has addressed it in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2005–0086, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Pesticide Programs Docket in the Public Information and Records Integrity Branch, Crystal Mall #2, Rm. 119, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the Docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Notice of Pesticide Registration by States to Meet a Special Local Need under FIFRA Section 24(c).

ICR Status: This is a request to renew an existing approved collection that is scheduled to expire on January 31, 2006. Under OMB regulations, agencies may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable.

Abstract: This data collection program is designed to provide the EPA with the necessary data to review approval of a state issued pesticide registration. Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes the States to register additional uses of federally registered pesticides for distribution and use within the State to meet a special local need (SLN). A state-issued registration under section 24(c) is deemed a federal registration for the purposes of the pesticides use within the States boundaries. Under the law, and pursuant to 40 CFR part 162, subpart D, a State must notify EPA, in writing, of any action it takes, *i.e.*, issues, amends, or revokes a state registration. EPA has 90 days to disapprove the registration. In such cases, the State is responsible for notifying the affected registrant.

Burden Statement: Under the PRA, ''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. It 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 23,400. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: States and territorial governments.

Estimated Number of Respondents: 60.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 23,400.

Estimated Total Annual Labor Cost: $2,126,520.

Changes in the Estimates: There is an increase of 5,200 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is an adjustment based on a rise in the number of petitions received annually over the last 3 years.

Dated: January 20, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–1352 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8027–2]

Science Advisory Board Staff Office; Notification of Three Public Teleconferences and a Meeting of the Science Advisory Board EPI Suite Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces three public teleconferences and a face-to-face meeting of the SAB EPI Suite Review Panel to review software developed by the Office of Pollution Prevention and Toxics known as the Estimation Programs Interface (EPI) Suite. An agenda and documents for this teleconference will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to the call.

DATES: Public teleconferences of the SAB EPI Suite Review Panel will be held on Wednesday, February 22, 2006, Wednesday, March 1, 2006, and Wednesday, April 5, 2006, from 1 p.m. to 3 p.m. eastern standard time. The face-to-face public meeting will be held March 7–9, 2006, from 9 a.m to 5:30 p.m. eastern standard time.

ADDRESSES: The public teleconferences will take place via telephone only. The public face-to-face meeting will be held at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: General information concerning the SAB can be found on the SAB Web Site at: *http://www.epa.gov/sab.* Members of the public who wish to obtain the call-in number and access code for the teleconferences, or further information concerning the public face-to-face meeting may contact Ms. Kathleen White, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9878; by fax at (202) 233–0643; or by e-mail at *white.kathleen@epa.gov.* Technical Contact: For questions and information concerning the software being reviewed, please contact Dr. Robert Boethling, U.S. Environmental Protection Agency, by telephone (202) 564–8533; or by e-mail at *boethling.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA

Administrator on the technical basis for Agency positions and regulations. The SAB has been asked to review software developed by the Office of Pollution Prevention and Toxics known as the Estimation Programs Interface (EPI) Suite and has formed a specialized EPI Suite Review Panel for this purpose as previously announced (70 FR 4846, January 31, 2005).

The Panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. EPI Suite is routinely used in evaluating new chemicals under EPA's Premanufacture Notices (PMNs) for new chemicals under section 5 of the Toxic Substances Control Act, and is widely used for predicting physical/chemical properties and environmental fate and transport properties for chemicals already in commerce. A more extensive description of EPI Suite can be found at: *http://www.epa.gov/opptintr/exposure/docs/episuite.htm.* EPI Suite can be downloaded from *http://www.epa.gov/opptintr/exposure/docs/EPISuitedl.htm.*

The purpose of the teleconference on February 22, 2006, is to prepare the Panel for the review through briefings and a discussion and clarification of the charge. The purpose of the March 1, 2006, teleconference is to prepare the Panel and the Agency for the face-to-face meeting by responding to panelists' preliminary questions and identifying areas where additional information is needed. The purpose of the March 7–9, 2006, face-to-face meeting is for the Panel to reach consensus on the content of their response to the charge questions, to capture that consensus in writing, to brief the Agency on the major findings and conclusions, and to respond to Agency questions. The purpose of the April 5, 2006, teleconference is to provide the panelists with an opportunity to discuss their draft report and agree to final language. Subsequently, the Panel's report will be considered by the Board and transmitted to the Administrator.

Procedures for Providing Public Input: Members of the public may submit relevant written or oral information for the EPI Suite Review Panel to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of thirty minutes for all speakers. In general, individuals or groups requesting an oral presentation at a face-to-face meeting will be limited to five to ten minutes with no more than two hours for all speakers. Those interested should contact Ms. White (preferably via e-mail) no later than seven days before the meeting date to be placed on the public speaker list. Written Statements: Written statements should be received in the SAB Staff Office at least seven days before the meeting so that the comments may be made available to the Panel for timely consideration. Comments should be supplied to the DFO in the following formats: One hard copy with original signature by mail, and one electronic copy by e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MSWord, MSPowerPoint or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for people with disabilities, please contact Ms. Kathleen White at 202–343–9878 or *white.kathleen@epa.gov.* To request accommodation of a disability, please contact Ms. White, preferably at least ten business days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 26, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–1350 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0507; FRL–7758–4]

Inorganic Chlorates Risk Assessments, Notice of Availability and Request for Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the inorganic chlorates and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for inorganic chlorates through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0507, must be received on or before April 3, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Felicia Fort, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7478; fax number: (703) 308–8005; e-mail address: *fort.felicia@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, 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. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0507. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document

electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

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

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0507. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0507. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2005–0507.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA–HQ–OPP–2005–0507. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for inorganic chlorate pesticides, and soliciting public comment on risk management ideas or proposals. The inorganic chlorates consist of sodium chlorate, calcium chlorate, potassium chlorate and magnesium chlorate. Only sodium chlorate is present as an active ingredient in currently registered products. EPA developed the risk assessments and risk characterization for inorganic chlorates through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Sodium chlorate is used agriculturally as a defoliant and dessicant, primarily on cotton, however it is also applied to a wide variety of other crops including, but not limited to, rice, corn, soybeans, dry beans, potatoes, sunflowers, flax, safflower, chili peppers (for processing only), grain sorghum, and wheat. As a non-selective herbicide it is also applied to industrial/non-crop areas such as rights-of-ways, building perimeters, ditch banks, bleachers, airport runways, vacant lots, fire hydrants, or as a pre-paving treatment. Sodium chlorate is also used as an antimicrobial agent to generate chlorine dioxide for use to bleach wood pulp/paper and treat drinking water.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for inorganic chlorates. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as worker exposure data, percent crop treated information, residue data from food processing studies, use information for the non-agricultural uses, drinking water treatment practices, etc., or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide. Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for inorganic chlorates.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to inorganic chlorates, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For inorganic chlorates, a modified, 4–Phase process with one comment period and ample opportunity for public consultation is appropriate. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may consider an additional comment period.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for inorganic chlorates. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 19, 2006.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 06–841 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0321; FRL–7750–5]

Notice of Filing of a Pesticide Petition for the Establishment of an Exemption from the Requirement of a Tolerance for Residues of C11–12 Rich Aromatic Hydrocarbon Fluid (Aromatic 200 Fluid) in or on Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of a tolerance for residues of C11–12 rich aromatic hydrocarbon fluid (Aromatic 200 Fluid) in or on food commodities when used as an inert ingredient in pesticide products.

DATES: Comments must be received on or before March 3, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2005–0321 and pesticide petition number (PP) 4E6937, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *E-mail*: *opp.docket@epa.gov*.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2005–0321. 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–2005–0321. 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 *www.regulations.gov* or e-mail. The *www.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 *www.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 www.regulation.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 in *www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., 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: Bipin Gandhi, Registration Division, (7505C), Office of Pesticide Programs, U. S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; (703) 308–8380; e-mail: *gandhi.bipin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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

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

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

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

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

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

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

• If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

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

• Make sure to submit your comments by the comment period deadline identified.II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 4E6937. ExxonMobil Chemical Company (ExxonMobil), Division of Exxon Mobil Corporation, 13501 Katy Freeway, Houston, TX 77079, proposes to establish an exemption from the requirement of a tolerance for residues of C11–12 rich aromatic hydrocarbon fluid (Aromatic 200 Fluid) in or on food commodities when used as an inert ingredient in pesticide products. Because this petition is a request for a tolerance exemption without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: *January 25, 2006.*

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–951 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0310; FRL–7756–5]

Notice of Filing of a Pesticide Petition for the Establishment of an Exemption from the Requirement of a Tolerance for the Residues of Amine Oxides in or on Food Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of an exemption from the requirement of a tolerance for the residues of amine oxides in or on food commodities when used as an inert ingredient in pesticide products.

DATES: Comments must be received on or before March 3, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP–2005–0310 and pesticide petition number (PP) 5E7003, by one of the following methods:

• *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *E-mail*: *opp.docket@epa.gov*.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA-HQ-OPP–2005–0310. 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–2005–0310. 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.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 www.regulation.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 in *www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., 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: Pauline Wagner, Registration Division, (7505C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460–0001; (703) 308–6164; e-mail: *wagner.pauline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

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

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 5E7003. Stepan Company, 951 Bankhead Highway, Winder, GA 30680, proposes to establish an exemption from the requirement of a tolerance for residues of amine oxides in or on food commodities when used as an inert ingredient. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–1343 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0015; FRL–7758–3]

Potassium Chloride; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the Virginia Department of Agriculture and Consumer Service to use the pesticide potassium chloride (CAS No. 7447–40–7) to treat the Millbrook Quarry to control zebra mussels. The Applicant proposes the use of a new chemical which has not been registered by EPA. Due to the urgent nature of the emergency and the very narrow and extremely limited use being requested, EPA has eliminated the public comment period. Nonetheless, interested parties may still contact the Agency with comments about this notice and treatment program.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0015, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *E-mail*: *opp-docket@epa.gov*.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), 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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2006–0015. 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–2006–0015. 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 regulation.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) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., 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: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; fax number: (703) 308–5433; e-mail address: *Sec-18-Mailbox@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

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

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

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

i. Identify the document by docket 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.

II. Background

A. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Virginia Department of Agriculture and Consumer Service has requested the Administrator to issue a quarantine exemption for the use of potassium chloride to treat the Millbrook Quarry to control zebra mussels. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the zebra mussels need to be eradicated from the Millbrook Quarry while they are still contained and before they enter another local body of water. Zebra mussels are an invasive species and to date have caused billions of dollars of damage in the United States. The state contends that the zebra mussel could have significant adverse short-term and long-term ecological and economic impacts in Virginia. The quarry is separated from Broad Run by a 200 - 300 foot-wide berm. Lake Manassas (5½ miles downstream from the quarry) serves as the primary water supply for the City of Manassas and a number of municipalities in the area. And downstream of Lake Manassas is the Occoquan Reservoir, which serves a

larger water supply capacity (over 1 million people in Northern Virginia) and a number of power supply facilities that could be significantly affected if zebra mussels escape to infest the Occoquan watershed. Fairfax Water estimates that they would incur a $2 - $4 million capital outlay for chemical feed facilities and $500,000 - $850,000 per year for chemicals and system maintenance.

The Applicant proposes to make 1 to 4 applications of a 12% liquid potassium stock solution mixed from muriate of potash. Two-hundred million gallons of water in the quarry will be treated with 128,000 kilograms of active ingredient (131,000 kg of dry muriate of potash).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a quarantine exemption proposing ''use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA.''

As noted above, the Agency is eliminating the comment period due to the urgent nature of emergency situation and the very narrow and extremely limited use being requested. Nonetheless, interested parties may still contact the Agency with comments about this notice and treatment program.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 20, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 06–936 Filed 1–31–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0513; FRL–7755–8]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–06–0001. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective December 22, 2005.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Eric M. Jackson, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 546–0014; e-mail address: *jackson.eric@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0513. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005 by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

III. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–06–0001.

Date of Receipt: November 7, 2005.

Notice of Receipt: December 9, 2005 (70 FR 73247) (FRL–7751–2).

Applicant: PPG Industries, Inc.

Chemical: Cycloaliphatic carboxylic acid, alkyl substituted-, mixed esters with aliphatic caboxylic acid and alkylpolyol (generic chemical name).

Use: Component of an Industrial Coating (generic use description).

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential days, commencing on first day of commercial manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

V. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VI. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: December 22, 2005.

Miriam Wiggins-Lewis,

Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. E6–1340 Filed 1–31–06 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK

[Public Notice 78]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The form will be used by exporters to report and pay premiums on insured shipments to various foreign buyers. Our customers will be able to submit this form on paper or electronically.

DATES: Written comments should be received on or before April 3, 2006, to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to Walter Kosciow, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3649.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Report of Premiums Payable for Exporters Only, EIB 92–29.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to record customer utilization and manage prospective insurance liability relative to risk premiums received.

Affected Public: The form affects entities involved in the export of U.S. goods and Services.

Estimated Annual Respondents: 1,600.

Estimated Time Per Respondent: 30 Minutes.

Estimated Annual Burden: 9,600.

Frequency of Reporting or Use: Monthly.

Dated: January 26, 2006.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK--REPORT OF PREMIUMS PAYABLE FOR EXPORTERS ONLY

(please type or print all information)

IF NO PREMIUMS PAYABLE, CHECK HERE ☐

POLICY NUMBER:(_____) -_____ Report for period:_____through_____
(prefix) (number) (month) (day) (year) (month) (day) (year)

POLICYHOLDER:_____

Contact:_____

Tel:_____Fax:_____E-Mail:_____

BROKER:_____

Date Received

USING SAME CODE? If same for all transactions check these code and rate boxes instead of those in the reporting columns below

- Coverage Type ☐ _____
- Risk Type ☐ _____
- Transaction Type ☐ _____
- Term Code ☐ _____
- Premium Rate ☐ $_____

ITEM	BUYER NAME (refer to Step 1. on back)	COUNTRY	Coverage Type Code	Risk Type Code	Transaction Type Code	Term Code	TRANSACTION AMOUNT *	SHIPMENT DATE	Premium Rate Per $100	PREMIUM DUE
1.										
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8.										
		PAGE TOTALS								
	complete only on last page →	REPORT TOTALS								

* Enter financed amount for Financial Institution Supplier Credit Policy (FISC)

We hereby certify that this report is a complete and accurate declaration of all transactions required to be reported under the terms of the policy and that premiums have been correctly computed and remitted. We understand that Ex-Im Bank's acceptance of this report or the premium due is not an acknowledgement of coverage and does not constitute a waiver of any policy condition or limitation. Unless otherwise specified by us in this report, we understand Ex-Im Bank will assume that short term transactions were made with private-sector obligors on six-month open account terms, and that premium rates will be calculated accordingly. We understand that, for purposes of policy compliance, this report is not received by Ex Im Bank until both this report and the premium due hereunder are received.

Name of Preparer:_____ Phone:(___)_____-_____

Signature:_____ Date Prepared:_____, ___
(month) (day) (year)

Page No.____ of ____ pages

EIB-92-29 (0//06)

SEE REVERSE SIDE FOR ADDITIONAL NOTES AND INSTRUCTIONS ON COMPLETING THIS REPORT

COVERAGE TYPES (see Note C. on next page) **CODE**

- Comprehensive ..... A
- Political Only ..... B
- Sales to Your Subsidiaries or Affiliates ..... B

RISK TYPES **CODE**

- Private Sector Buyer or Guarantor 4
- Government Sector (Non-Sovereign) Buyer or Guarantor 3
- Financial Institution Buyer or Guarantor or Letter of Credit issuer 2
- Government Sector (Sovereign) Buyer or Guarantor 1

(A "sovereign" is a national government or government entity that the insurer has determined carries the full faith and credit of the national government. Most government sector companies and/or agencies do not carry the full faith and credit of their government and are therefore considered "non-sovereign" and should be reported as such unless the insurer has determined otherwise.)

TRANSACTION TYPE **CODE**

- Letters of Credit (deferred payment or sight) ..... A
- Bank-Guaranteed (if applicable, use in lieu of any other code) ..... B
- Drafts/Promissory Notes/CAD or SDDP* C
- Open Account ..... D
- Pre-Shipment (selective contracts) ..... E
- Consignment ..... F

TERM (corresponding to Transaction Type being reported) ..... **CODE**

- Sight Letters of Credit 1
- CAD or SDDP** 2
- 1-30 Days 3
- 31-60 Days 4
- 61-120 Days 5
- 121-180 Days 6
- 181-270 Days 7
- 271-360 Days 8
- 1 1/2 Years 9
- 2 Years 10
- 2 1/2 Years 11
- 3 Years 12
- 3 1/2 Years 13
- 4 Years 14
- 4 1/2 Years 15
- 5 Years 16
- Over 5 Years 17

** CAD = Cash Against Documents

SDDP = Sight Draft Documents Against Payment

MAKE CHECKS PAYABLE TO: EXPORT-IMPORT BANK OF THE UNITED STATES OR EX-IM BANK

MAIL THIS REPORT WITH YOUR PAYMENT TO: EXPORT-IMPORT BANK OF THE UNITED STATES
DEPT. 22
WASHINGTON, D.C. 20055

INSTRUCTIONS FOR REPORTING PREMIUMS PAYABLE

Complete the page heading on the front of this report-form, then follow the steps shown below to report each transaction.
(If **NO** premiums are payable, check the appropriate box on the front of this report-form.)

STEP 1. Enter the FOREIGN BUYER NAME, or if you are reporting a letter of credit transaction, the name of the bank issuing the letter of credit. (please avoid using acronyms if possible.)

STEP 2. Enter the COUNTRY in which the foreign buyer is located, or if you are reporting a letter of credit transaction, the COUNTRY in which the bank issuing the letter of credit is located. (Abbreviate if necessary.)

STEP 3. Enter the applicable COVERAGE TYPE CODE from the list given on the front of this report-form. **(see Note A and Note C below.)**

STEP 4. Enter the applicable FOREIGN BUYER TYPE CODE from the list given on the front of this report-form. **(see NOTE A below.)**

STEP 5. Enter the applicable TRANSACTION TYPE CODE from the list given on the front of this report-form. **(see NOTE A and NOTE B below.)**

STEP 6. Enter the applicable TERM CODE from the list given on the front of this report-form. (Note that the term should correspond only to the particular TRANSACTION TYPE you are recording. For example, if you are reporting a "pre-shipment" or "consignment" transaction indicate the length of the "pre-shipment" or "consignment" period only.) **(see NOTE A and NOTE B below.)**

STEP 7. Enter the AMOUNT of the transaction. (Use the contract price for short-term transactions. Use contract price, less down payment for medium term transaction.)

STEP 8. Enter your PREMIUM RATE. (if your policy has more than one premium rate, or if your premium rate is taken from a rate schedule, be sure to use the correct premium rate.) **(see NOTE A below.)**

STEP 9. Enter the PREMIUM DUE by applying the AMOUNT you have declared under Step #7 to the applicable PREMIUM RATE. (if you are using the same premium rate for all transactions reported on this form and have checked the box marked "USING SAME CODE", you need only show **total** premium due at the end of your report.)

STEP 10. Enter PAGE TOTALS and REPORT TOTALS for AMOUNT and for PREMIUM DUE.

STEP 11. Read the paragraph at the bottom of the report-form, then enter your SIGNATURE and DATE PREPARED.

ADDITIONAL NOTES

NOTE A. If you expect to use the same code (or rate) for each transaction recorded on this page, check the box on the front of this report-form marked "USING SAME CODE" then enter the appropriate code (or rate) in the space provided. You need not enter the code (or rate) for each transaction thereafter.

NOTE B. Be certain that your policy allows you to use the TRANSACTION TYPE or TERM being reported.

NOTE C. "Comprehensive" means commercial and political risks coverage.
"Political Only" means that coverage is restricted to political risks. Insured transactions with your subsidiaries or affiliates are covered on a "political only" basis.

SPECIAL POLICIES--REPORTING ADDITIONAL INFORMATION (If your policy has been endorsed to require you to report information not included on the front of this report-form, you may use the space provided below to report that information. Numbers to the left refer to line-item numbers on the front of this form.) ITEM

1. _____

2. _____

3. _____

4. _____

5. _____

EIB-92-29 (10/05)

[FR Doc. 06–934 Filed 1–31–06; 8:45 am]
BILLING CODE 6690–01–C

EXPORT-IMPORT BANK

[Public Notice 79]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The form will be used by Banks to apply for comprehensive or political insurance coverage on foreign banks for letter of credit transactions.

Our customers will be able to submit this form on paper or electronically.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to Walter Kosciow, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3649.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Export-Import Bank of the United States Application for Issuing Bank Credit Limit (IBCL) Under Bank Letter of Credit Policy, EIB 92–36.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to process credit risk applications involving foreign letter of credit issuing banks.

Affected Public: The form affects entities involved in the export of U.S. goods and services.

Estimated Annual Respondents: 60.

Estimated Time Per Respondent: 20 minutes.

Estimated Annual Burden: 240.

Frequency of Reporting or Use: 1 to 12 times per year depending on the particular respondent's need/risk portfolio.

Dated: January 26, 2006.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

APPLICATION FOR ISSUING BANK CREDIT LIMIT (IBCL) UNDER BANK LETTER OF CREDIT POLICY

App. No. _____
(Ex-Im Bank Use Only)

1. Applicant Bank:	Policy No.:	2. Broker	(If none, state "None")
State:			
Attn.:	Tel No.:	Contact:	Tel No.:
Fax No.:	E-Mail:	Fax No.:	E-Mail:

3. Issuing Bank
(Legal name, address, city, country)

File No. _____
(Ex-Im Bank Use Only)

4. Is this application a resubmission of a previously submitted application? ___ Yes ___ No

5. Coverage option: ___Comprehensive ___Political only

6. Details of letters of credit (L/Cs) you wish to insure:

a. L/C Amount $_____

b. L/C number (if available) _____ _____

c. L/C transaction type (check): ___ Usance Letter of Credit - or - ___ Refinanced Letter of Credit

d. L/C tenor (enter): ____ Actual # of Days - or - ___ Sight (check)

e. Expiry date of L/C: ___/___/_____ (mm/dd/yyyy)

f. Importer Name: _____City:_____ Country: _____

___ If Various Importers (check here)

g. Exporter Name: _____ City:_____ Country: _____

___ If Various Exporters (check here)

h. Beneficiary Name: _____ City: _____ Country: _____
(if exporter is not the beneficiary)

___ If Various Beneficiaries (check here)

i. L/C Payment currency: _____

j. L/C Payment country: _____ _____

7. Products:

a. (describe products) * _____

b. Are the products on the Munitions Control List? ___ Yes ___ No

c. Are the products capital goods sold to foreign manufacturers or producers? ___ Yes ___ No

d. If you answered "Yes" in 7c: (i) Provide details of product use_____

_____

(ii) Will the products be used to produce exportable goods? ___ Yes ___ No

8. What effective date do you require for the IBCL? ___/___/_____ (mm/dd/yyyy)

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/antidump_countervailing/index.htm. There may not be trade measures against them under Section 201 of the Trade Act of 1974, see www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/completed/index.htm#safeguardclick on 201.

9. Applicant's experience with the issuing bank:

   a. Do you extend insured or uninsured credit facilities to the L/C issuing bank? ___ Yes ___ No

   b. If "Yes," provide details on the type, size, and usage of credit facilities extended to the L/C issuing bank:_____

   c. If "Yes," does the L/C issuing bank consistently meet its credit obligations in accordance with the agreed terms? ___ Yes ___ No

10. Is the L/C issuing bank an affiliate of the applicant as defined in the policy? ___ Yes ___ No. If "Yes," please describe the relationship:

11. Please provide any additional comments and/or specify any special requirements for the IBCL application:

12. The following credit information on the L/C issuing bank may be required. Ex-Im Bank will notify you if any of these items are required to process the application. At your option, you may attach copies of any of these items or others that you wish to submit with the application.

    A. Audited fiscal year-end financials statements for the past two (2) years, including notes. Interim financial statements may also be required if the most recent fiscal year-end statements are more than 9 months old.

    B. A bank reference dated within 6 months of the application from a correspondent bank. The reference should indicate if credit lines are secured and the type of credit facilities offered.

    C. Background information on the L/C issuing bank, including a description of the bank's operation and structure and a list of the shareholders who directly or indirectly own 10% or more of the bank, with their corresponding ownership percentages.

    D. Rating Agencies' reports on the L/C issuing bank.

13. The applicant certifies that the representations made and the facts stated by it in the application for the said IBCL are true, to the best of its knowledge and belief, and that it has not misrepresented or omitted any material facts relevant to said representations. The applicant agrees that such representations and facts shall form the basis of and be incorporated in the IBCL, if issued and that the truth of such representations and facts contained herein shall be a condition precedent to any liability of Ex-Im Bank thereunder. The applicant understands that this certification is subject to the penalties for fraud provided in Article 18, United States Code, Section 1001.

By: _____ _____ _____ _____

(Authorized Signature) (Print Name) (Title) (Date

[FR Doc. 06–935 Filed 1–31–06; 8:45 am]
BILLING CODE 6690–01–C

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, February 2, 2006 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Open Agenda Item

1. Request for Individual Delegated authority and Amendment to Short-Term Insurance Program for Iraq; and
2. Renewal of Short-Term Insurance Pilot Program for Africa.

Public Participation

The meeting will be open to public participation for Items No. 1 and 2 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

Howard A. Schweitzer,

Acting General Counsel.

[FR Doc. 06–996 Filed 1–30–06; 3:33 pm]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 19, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 3, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0466.

Title: Sections 73.1201, 74.783 and 74.1283, Station Identification.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local and tribal government.

Number of Respondents: 2,900.

Estimated Time per Response: 10 minutes—2 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 3,966 hours.

Total Annual Cost: $80,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1201(a) requires television broadcast licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

47 CFR 73.1201(b) requires the licensees' station identification to consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location. The name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. Digital Television (DTV) stations choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a station with major channel number 26 may use 26.1 to identify a High Definition Television (HDTV) program service and 26.2 to identify a Standard Definition Television (SDTV) program service. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

47 CFR 74.783(b) requires licensees of television translators whose station identification is made by the television station whose signals are being rebroadcast by the translator, must secure agreement with this television licensee to keep in its file, and available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or service representative to be contacted in the event of malfunction of the translator.

47 CFR 74.783(e) permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. LPTV respondents are required to use the on-line electronic system. To enable these respondents to use this on-line system, the Commission eliminated the requirement that holders of LPTV construction permits submit with their call sign requests a certification that the station has been constructed, that physical construction is underway at the transmitter site, or that a firm equipment order has been placed.

47 CFR 74.1283(c)(1) requires FM translator stations whose station identification is made by the primary station to furnish current information on the translator's call letters and location. This information is kept in the primary station's files. This information is used to contact the translator licensee in the event of malfunction of the translator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–750 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

January 13, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 3, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0512.

Title: ARMIS Annual Summary Report.

Report No.: FCC Report 43–01.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 126.

Estimated Time per Response: 88 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 11,088 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them. The Commission has revised this information collection because five mid-sized carriers reached the revenue threshold, two mid-sized carriers were eliminated because they fell below the revenue threshold and one carrier was sold. The Commission has also deleted one row in the ARMIS Annual Summary Report (FCC Report 43–01). FCC Report 43–01 facilitates the annual collection of the results of accounting, rate base, and cost allocation requirements prescribed in Parts 32, 36, 64, 65 and 69 of the Commission's rules. ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements, rates of return and price caps; to provide an improved basis for audits and other oversight functions; and to enhance the Commission's ability to quantify the effects of alternative policy. The FCC Report 43–01 contains financial and operating data and is used to monitor the incumbent local exchange carriers and to perform routine analyses of cost and revenues.

OMB Control No.: 3060–0513.

Title: ARMIS Joint Cost Report.

Report No.: FCC Report 43–03.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 82.

Estimated Time per Response: 50 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 4,100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them. The Commission has revised this information collection due to the addition of two rows for Account 6623. The Commission uses an indexed revenue threshold to determine which carriers are required to file the ARMIS reports. The revenue threshold is currently $125 million. In this submission, the Commission also revised the number of carriers filing this ARMIS report from 83 to 82 to reflect one carrier that was sold and will no longer file this report. The ARMIS Joint Cost Report, FCC Report 04–03, contains financial and operating data. The Report details the incumbent local exchange carriers (ILECs) regulated and nonregulated cost and revenue allocations by study area pursuant to Part 64 of the Commission's rules.

OMB Control No.: 3060–0978.

Title: Section 20.18, 911 Service, Fourth Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,000 respondents; 32,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: Quarterly reporting requirement and third party disclosure requirement.

Total Annual Burden: 32,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is seeking an extension (no change in reporting requirements) for this information collection in order to obtain the full three-year clearance from OMB.

The Commission's Fourth Report and Order took steps to ensure persons with hearing and speech disabilities using text telephone (TTY) devices will be able to make 911 emergency calls over digital wireless systems. The Fourth Report and Order established June 30, 2002, as the deadline by which digital wireless service providers must be capable of transmitting 911 calls made using TTY devices. In order to monitor the development and implementation of this capability within carrier networks, the Commission imposes quarterly reporting requirements on carriers which may be fulfilled by reporting through an industry forum that has been actively involved in resolving TTY/digital compatibility problems. The Commission will use this information submitted in the quarterly TTY reports

to keep track of the carriers' progress in complying with E911 TTY requirements and also to monitor the progress technology is making towards compatibility with TTY devices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–751 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

January 19, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments April 3, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0927.

Title: Auditor's Annual Independence and Objectivity Certification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5.

Estimated Time per Response: 5 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 25 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 64.904 requires certain local exchange carriers, in connection with their cost allocation manual filings and the accompanying financial reports the Commission prescribes under 47 U.S.C. Sections 220, 219(b) and 201(b), to have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or have a financial audit performed by an independent auditor every two years, covering the prior two year period. The attest engagement is to be performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants (AICPA), except as otherwise directed by the Chief, Enforcement Bureau, FCC. The audit is to be conducted in compliance with generally accepted auditing standards (GAAS), except as otherwise directed by the Enforcement Bureau.

The Responsible Accounting Officer (RAO) letter requires that carriers' independent auditors provide on an annual basis: (a) Disclose in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; (b) confirm in writing that in its professional judgment it is independent of the carrier; and (c) discuss the auditor's independence. The information will be used to determine whether the independent auditors are performing their audits independently and unbiased of the carrier they audit.

The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–752 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 19, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An Agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the paper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 3, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your comments by e-mail or U.S. mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail send them to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office

of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* to contact Kathy Williams at (202) 418–2918. If you would like to obtain a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer's Act.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 848.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 125,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B signal strength tests will be used to indicate whether consumers are ''unserved'' by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–797 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 23, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 3, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0573.

Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.

Form Number: FCC Form 394.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 2,000.

Estimated Time per Response: 1 hour to 5 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 7,000 hours.

Total Annual Cost: $375,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Cable operators use FCC Form 394 to apply to the local franchise authority (LFA) for approval to assign or transfer control of a cable television system. With the information provided by FCC Form 394, LFAs can restrict profiteering transactions and other transfers that are likely to have an adverse effect on cable rates or service in the franchise area.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–889 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

January 24, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be

submitted on or before April 3, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 3,328.

Estimated Time per Response: 2–4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 8,613 hours.

Total Annual Cost: $45,526,847.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This FCC Form is to be used to apply for authority to construct a new commercial AM, FM, or TV broadcast station or to make changes in the existing facilities of such a station. In the case of new station and major modification proposals, this application is filed by either the successful bidder at a broadcast frequency auction or by an applicant proposing facilities that are not mutually exclusive with any other application filed during the same window and thus not subject to the Commission's comparative bidding procedures. All proposals for minor changes to authorized commercial stations are also to be filed on this form.

On November 4, 2005, the Commission released the *Notice of Proposed Rule Making (NPRM), In the Matter of Digital Television Distributed Transmission System Technologies*, MB Docket No. 05–312; FCC 05–192. With this *NPRM*, the Commission proposes to revise FCC Form 301 to accommodate the use of a distributed transmission system (''DTS'') network. Applicants seeking to create a DTS network or add transmitters to an existing DTS network must file a minor change application using a FCC Form 301.

OMB Control Number: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form Number: FCC Form 302–DTV.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 610.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 965 hours.

Total Annual Cost: $257,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licensees and permittees of DTV broadcast stations are required to file FCC Form 302–DTV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC Form 302–DTV for inclusion in the subsequent license to operate the station.

On November 4, 2005, the Commission released the *Notice of Proposed Rule Making (NPRM), In the Matter of Digital Television Distributed Transmission System Technologies*, MB Docket No. 05–312; FCC 05–192. With this *NPRM*, the Commission proposes to revise FCC Form 302–DTV to accommodate the use of a distributed transmission system (''DTS''). Applicants will file Form 302–DTV to get a license to cover the construction permit that authorized DTS.

OMB Control Number: 3060–0029.

Title: Application for TV Broadcast Station License; Application for Construction Permit for Reserved Channel Noncommercial Education (NCE) Broadcast Station; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC Form 302–TV, FCC Form 340 and FCC Form 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 2,665.

Estimated Time per Response: 1–4 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; One-time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 8,130 hours.

Total Annual Cost: $17,892,625.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 302–TV is used by licensees and permittees of TV broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of these stations. FCC staff use the data to confirm that the station has been built to terms specified in the outstanding construction permit.

FCC Form 340 is used to apply for authority to construct a new noncommercial educational (NCE) FM and TV stations or to make changes in the existing facilities of such a station. The FCC Form 340 is to be used for channels that are reserved exclusively for noncommercial educational use and on non-reserved channels if the applicant proposes to build and operate a NCE station.

Existing authorized noncommercial educational analog stations seeking to receive authorization for commencement of Digital TV (DTV) operation must file FCC Form 340 for a construction permit. This application may be filed anytime after receiving the initial DTV channel allotment, but must be filed before the mid-point in a particular applicant's required construction period. The Commission will consider these applications as minor changes in facilities. Applicants do not have to supply full legal or financial qualification information. In addition, applicants for a newly allotted DTV channel reserved for noncommercial educational use(s) must also file the FCC Form 340.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. This form also includes the third party disclosure requirement of 47 CFR Section 73.3580. Section 73.3580 requires local public notice in a newspaper of general circulation of all application filings for new or major change in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week

for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

On November 4, 2005, the Commission released the *Notice of Proposed Rule Making (NPRM), In the Matter of Digital Television Distributed Transmission System Technologies*, MB Docket No. 05–312; FCC 05–192. With this *NPRM*, the Commission proposes to revise FCC Form 340 to accommodate the use of a distributed transmission system (''DTS'') network. Applicants seeking to create a DTS network or add transmitters to an existing DTS network must file a minor change application using FCC Form 301.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–890 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 24, 2006.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0147.

OMB Approval Date: January 19, 2006.

Expiration Date: January 31, 2009.

Title: Section 64.804—Extension of Unsecured Credit for Interstate and Foreign Communication Services to Candidates for Federal Office.

Form No.: N/A.

Estimated Annual Burden: 13 responses; 104 total annual burden hours; 8 hours per respondent.

Needs and Uses: Communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a candidate or person on behalf of such candidates for Federal office must file with the FCC a report including due and outstanding balances. The information is used tor monitoring purposes.

OMB Control No.: 3060–0704.

OMB Approval Date: January 13, 2006.

Expiration Date: January 31, 2009.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form No.: N/A.

Estimated Annual Burden: 519 responses; 84,337 total annual burden hours; approximately .5–120 hours average per respondent.

Needs and Uses: These collections of information are necessary to provide consumers ready access to information concerning the rates, terms, and conditions governing the provision of interstate, domestic and interexchange services offered by nondominant interexchange carriers (IXCs) in a detariffed and increasingly competitive environment. In the Second Order on Reconsideration issued in CC Docket No. 96–61, (March 1999), the Commission reinstated the public disclosure requirement and also required that nondominant interexchange carriers that have Internet Web sites to pass this information on-line in a timely and easily accessible manner. These carriers are also required to file annual certifications pursuant to section 254(g); maintain prices and service information; and are forborne from filing certain tariffs. The tariff cancellation requirement has been completed so the burden for that part of this collection has been removed.

OMB Control No.: 3060–1009.

OMB Approval Date: January 19, 2006.

Expiration Date: January 31, 2009.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No.: FCC 499 M.

Estimated Annual Burden: 1 response; 1 total annual burden hour; 1 hour per respondent.

Needs and Uses: In December 2002, the Commission issued a Second Further Notice of Proposed Rulemaking seeking comment on specific aspects of three connection-based proposals to further refine the record in its proceeding to revisit its universal service contribution methodology. First, the Commission sought comment on a contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers, and a flat charge for each end-user connection, depending on the nature or capacity of the connection. Next, the Commission sought comment on a proposal to assess all connections based purely on capacity. Finally, the Commission sought comment on a proposal to assess providers of switched connections based on their working telephone numbers. If adopted, the proposals may entail altering the current reporting requirements to which interstate telecommunications carriers are subject under Part 54 of the Commission's rules.

OMB Control No.: 3060–1085.

OMB Approval date: January 13, 2006.

Expiration Date: January 31, 2009.

Title: Collection of Location Information, Provision of Notice and Reporting on Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance.

Form No.: N/A.

Estimated Annual Burden: 14,238,254 responses; 435,894 total annual burden hours; approximately .09–16 hours average per respondent.

Needs and Uses: On June 3, 2005, the Commission released a First Report and Order in WC Docket No. 04–36 and a Notice of Proposed Rulemaking in WC Docket No. 05–196, *FCC 05–116 (Order)* in which the Commission established rules requiring providers of interconnected VoIP—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN)—to provide enhanced 911 (E911) capabilities to their customers as a standard feature of service.

The Order requires collection of information in six requirements:

A. *Location Registration.* The Order requires providers of interconnected VoIP services to obtain location information from their customers for use in the routing of 911 calls and the provision of location information to emergency answering points.

B. *Provision of Automatic Location Information (ALI).* In order to meet the obligations set forth in the Order, interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a state government) across the country.

C. *Customer Notification.* In order to ensure that consumers of interconnected VoIP services are aware of their interconnected VoIP service's actual E911 capabilities, the Order requires that all providers of interconnected VoIP service specifically advise every subscriber, both new and existing,

prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

D. *Record of Customer Notification.* The Order requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

E. *User Notification.* In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on and/or near the customer premises equipment used in conjunction with the interconnected VoIP service.

F. *Compliance Letter.* The Order requires all interconnected VoIP providers to submit a letter to the Commission detailing their compliance with the rules set forth in the Order no later than 120 days after the effective date of the Order. This letter will enable the Commission to ensure that interconnected VoIP providers have achieved E911 compliance by the established deadline.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–891 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–129; DA 05–3131]

Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice; comments requested.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau (Bureau) seeks comment on an application for review filed by a group of rural local exchange carriers (Rural LECs) regarding the obligations of local exchange carriers (LECs) when executing preferred interexchange carrier (IXC) changes. The Rural LECs request that the Bureau's initial ruling denying their petition regarding the Commission's carrier change verification rules be reversed and their petition granted.

DATES: Comments are due on or before February 13, 2006, and reply comments are due on or before February 16, 2006.

ADDRESSES: You may submit comments, identified by docket number and/or rulemaking number, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- Mail: Parties who choose to file by paper should also submit their comment on diskette. These diskettes should be submitted, along with three paper copies to Kelli Farmer, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Room 5–A866, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible formatted using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case CC Docket No. 94–129), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy-Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Marks, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512 (voice), *David.Marks@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 05–3131, released December 2, 2005. The full text of document DA 05–3131, the Rural LECs' submission, and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 05–3131, the Rural LECs' submission, and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *http://www.bcpiweb.com* or call 1–800–378–3160. A copy of the Rural LECs' submission may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert CC Docket No. 94–129 into the proceeding block). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Document DA 05–3131 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-

mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

Synopsis

On February 1, 2005, a group of rural local exchange carriers (Rural LECs) filed a Petition for Declaratory Ruling with the Commission regarding the obligations of local exchange carriers when executing preferred interexchange carrier (PIC) changes. *See* The Rural LECs, Petition for Declaratory Ruling with Respect to Obligations of Local Exchange Carriers to Execute Primary Interexchange Carrier Changes with Incorrect Subscriber Information, filed February 1, 2005 by 3 Rivers Telephone Cooperative, et al. (''Petition''). The Petition requested a Commission declaration that the Commission's rules do not prohibit the practice by rural LECs of rejecting requests from Interexchange Carriers (IXCs) to change a subscriber's preferred interexchange carrier where the name or telephone number on the request does not match that of the subscriber of record or person authorized by the subscriber to make changes to the account. On June 9, 2005, the Consumer & Governmental Affairs Bureau (''Bureau'') issued a Declaratory Ruling (''Ruling'') denying the Petition filed by the Rural LECs regarding the Commission's carrier change verification rules. *Declaratory Ruling*, CC Docket No. 94–129, DA 05–1618, released June 9, 2005 (''Ruling''), published at 71 FR 2895 (January 18, 2006). On July 8, 2005, the Rural LECs submitted an application for review requesting that the Bureau's Ruling be reversed and their Petition granted. *See* The Rural LECs, Application for Review, filed July 8, 2005. The Rural LECs argue that the Bureau's Ruling misreads their Petition, the Communications Act, the Commission's rules, and the law of agency. According to the Rural LECs, the Bureau ignored relevant appellate interpretation of the rules at issue and decided a significant question of law and policy not previously resolved by the Commission. Accordingly, the Rural LECs ask that the Bureau's Ruling be vacated and their Petition granted. In this document, the Bureau seeks comment on the issues raised by the Rural LECs.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 06–796 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2751]

Petitions for Reconsideration of Action in Rulemaking Proceeding

January 23, 2006.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by February 16, 2006. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Connersville, Madison, and Richmond, Indiana, Erlanger and Lebanon, Kentucky, and Norwood, Ohio; and Lebanon, Lebanon Junction, New Haven, and Springfield, Kentucky) (MB Docket No. 05–17).

Number of Petitions Filed: 1.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lake City, Chattanooga, Harrogate, and Halls Crossroads, Tennessee) (MB Docket No. 03–120).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–795 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2752]

Petitions for Reconsideration of Commission Action

January 23, 2006.

Petitions for Reconsideration have been filed in response to the Commission's Order in the proceeding listed in this Public Notice, and published pursuant to 47 CFR 1.106. Notwithstanding any statement to the contrary in any previous public notice, this proceeding is conducted consistently with section 316 of the Communications Act of 1934, 47 U.S.C. 316. The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by February 16, 2006. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands (IB Docket Nos. 05–220 & 05–221).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–888 Filed 1–31–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary,

Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011375–065.

Title: Trans-Atlantic Conference Agreement.

Parties: Atlantic Container Line AB; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and P&O Nedlloyd Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Hapag-Lloyd Container Linie GmbH as a party to the agreement.

Agreement No.: 011574–013.

Title: Pacific Islands Discussion Agreement.

Parties: Hamburg-Süd; Polynesia Line Ltd.; FESCO Ocean Management Limited d/b/a FESCO Australia North America Line; Australia-New Zealand Direct Line, a division of CP Ships (UK) Ltd.; CMA–CGM S.A.; and Compagnie Maritime Marfret, S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes P&O Nedlloyd Limited as a party to the agreement.

Agreement No.: 011584–006.

Title: NYK/WWL/NSCSA Cooperative Working Agreement.

Parties: Nippon Yusen Kaisha; Wallenius Wilhelmsen Lines AS; and National Shipping Company of Saudi Arabia.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The agreement changes the name of Wallenius Wilhelmsen Lines AS to Wallenius Wilhelmsen Logistics AS and restates the agreement to reflect the change throughout.

Agreement No.: 011705–005.

Title: Grand Alliance-CP Ships Atlantic Agreement.

Parties: Hapag-Lloyd Container Linie GmbH; Nippon Yusen Kaisha; Orient Overseas Container Line Limited, Orient Overseas Container Line, Inc., and Orient Overseas Container Line (Europe) Limited (acting as one party); P&O Nedlloyd Limited/P&O Nedlloyd BV; and CP Ships USA, LLC.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, D.C. 20036.

Synopsis: The amendment revises the service loops, vessel contributions, and space allocations under the agreement. The parties request expedited review.

Agreement No.: 011935.

Title: CSAV/NYK South America Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes CSAV to charter space to NYK on its ro-ro vessels in service from Baltimore, MD, to ports in Chile.

By order of the Federal Maritime Commission.

Dated: January 27, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–1358 Filed 1–31–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Logicargo Corp., 1209 Uniroyal Drive, Laredo, TX 78045. Officers: Alejandro Zamudio, President (Qualifying Individual), Eduardo Betesh, vice President.

Patron Star Corporatio, 425 S. San Gabriel Boulevard, Suite #200, San Gabriel, CA 91776. Officer: An-Ning Dai, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

JCI Logistics LLC, 2940 Husking Peg Lane, Geneva, IL 60134. Officer: Paul Curry, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Tri-Ocean Logistics, Inc., 20B Dreyer Avenue, Staten Island, NY 10314. Officers: Victor Rao, President (Qualifying Individual), Wilma Rodriguez-Rao, Vice President.

Dated: January 27, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–1363 Filed 1–31–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Seacoast Banking Corporation of Florida, Stuart, Florida; to merge with Big Lake Financial Corporation, and thereby indirectly acquire voting shares of Big Lake National Bank, Okeechobee, Florida.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Western Alliance Bancorporation, Las Vegas, Nevada; to merge with Intermountain First Bancorp, Las Vegas, Nevada, and thereby indirectly acquire voting shares of Nevada First Bank, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, January 27, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–1325 Filed 1–31–06; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Office of Citizen Services and Communications; Information Collection; Market Research Collection

AGENCY: Office of Citizen Services and Communications, General Services Administration (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 a renewal of a currently approved information collection requirement regarding Market Research for the Office of Citizen Services and Communications. A request for public comments was published at 70 FR 69154, November 14, 2005. No comments were received.

This information collection will be used to determine the utility and ease of use of GSA's Web site, *http://www.gsa.gov*. The respondents include individuals and representatives from businesses currently holding GSA contracts.

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: March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Jocelyn Johnson, Office of Citizen Services and Communications, at telephone (202) 208–0043, or via e-mail to *jocelyn.johnson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, 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. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget (OMB) to review and approve information collection 3090–0277 concerning Market Research Collection for the Office of Citizen Services and Communications. The purpose of this information collection is to inform GSA on how to best provide service and relevance to the American public via GSA's Web site *http://www.gsa.gov.* The information collected from an online survey, focus groups, and Web site usability testing will be used to refine the *http://www.gsa.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other for-profit groups.

B. Annual Reporting Burden

Respondents: 190.

Responses Per Respondent: 1.

Total Responses: 190.

Hours Per Response: 72.6 minutes.

Total Burden Hours: 230.

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. 3090–0277, Market Research Collection for the Office of Citizen Services and Communications, in all correspondence.

Dated: January 23, 2006.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. E6–1217 Filed 1–31–06; 8:45 am]

BILLING CODE 6820–CX–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Termination, By Expiration, of Declaration of Emergency Justifying Emergency Use Authorization of Anthrax Vaccine Adsorbed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice, under the Federal Food, Drug, and Cosmetic Act (the act), of the termination, by expiration, of the declaration of emergency justifying emergency use authorization of Anthrax Vaccine Adsorbed (AVA) that was issued by the former Secretary of Health and Human Services Secretary Tommy G. Thompson (the former HHS Secretary) on January 14, 2005. The declaration of emergency terminated by expiration on January 14, 2006, which is the end of the 1-year period that began on the date that the declaration was made. Under the act, advance notice of the termination of the declaration was provided to the Department of Defense.

DATES: The Notice is effective as of February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Boris Lushniak, Office of Counterterrorism Policy and Planning (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4067.

SUPPLEMENTARY INFORMATION:

I. Background

On December 10, 2004, the Deputy Secretary of Defense determined, under section 564(b)(1)(B) of the act (21 U.S.C. 360bbb–3(b)(1)(B)), that there was a significant potential for a military emergency involving a heightened risk to U.S. military forces of attack with anthrax. On the basis of such determination and under section 564(b)(1) of the act, the former HHS Secretary declared an emergency justifying the authorization of the emergency use of Anthrax Vaccine Adsorbed. A notice of the determination of the Deputy Secretary of Defense and the declaration of the former HHS Secretary was published in the **Federal**

Register of February 2, 2005 (70 FR 5452).

II. Advance Notice of Termination

Under section 564(b)(3) of the act, the FDA Commissioner provided advance notice of the termination of the former HHS Secretary's declaration of emergency to the Department of Defense.

The January 2006 letter notifying the Department of Defense of the termination of the declaration of emergency follows:

William Winkenwerder, Jr., M.D.,
Assistant Secretary of Defense for Health Affairs,

The Pentagon,
Washington, D.C. 20301–1200
Dear Dr. Winkenwerder:

This letter is to provide advance notice of the termination of the above-referenced declaration of emergency that was issued by Secretary of Health and Human Services Tommy G. Thompson on January 14, 2005, pursuant to section 564(b)(1) of the Federal Food, Drug, and Cosmetic Act (the Act), 21 U.S.C. § 360bbb–3.

In accordance with section 564(b)(2)(A)(ii) of the Act, the declaration of emergency will terminate by expiration on January 14, 2006, which is the end of the one year period that began on the date that the declaration was made. This advance notice of termination will be published in the **Federal Register**, pursuant to section 564(b)(4) of the Act.

Sincerely,

Andrew C. von Eschenbach, M.D.
Acting Commissioner of Food and Drugs

Dated: January 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–1311 Filed 1–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0445]

Determination of Regulatory Review Period for Purposes of Patent Extension; HUMIRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for HUMIRA 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 which claims that human biological 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: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6681.

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 of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological 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 biological 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 biological product HUMIRA (adalimumab). HUMIRA is indicated for reducing signs and symptoms, including major clinical response, inhibiting the progression of structural damage and improving physical function in adult patients with moderately to severely active rheumatoid arthritis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for HUMIRA (U.S. Patent No. 6,090,382) from Abbott Biotechnology Ltd., 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 8, 2005, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of HUMIRA 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 HUMIRA is 1,722 days. Of this time, 1,443 days occurred during the testing phase of the regulatory review period, while 279 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 (21 U.S.C. 355(i)) became effective*: April 16, 1998. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 16, 1998.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: March 28, 2002. FDA has verified the applicant's claim that the product license application (BLA) for HUMIRA (BLA 125057) was initially submitted on March 28, 2002.

3. *The date the application was approved*: December 31, 2002. FDA has verified the applicant's claim that BLA 125057 was approved on December 31, 2002.

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 326 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 April 3, 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 July 31, 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 (see **ADDRESSES**). 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: January 5, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–1313 Filed 2–1–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of Health and Human Services under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services, when that research is also regulated by FDA.

Date and Time: The meeting will be held on Wednesday, March 22, 2006, from 8 a.m. to 6 p.m.

Location: Washington DC North/ Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Jan N. Johannessen, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, rm. 14C–06) Rockville, MD 20857, 301–827–6687, e-mail: *Jan.Johannessen@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up to date information on this meeting.

Agenda: The Pediatric Advisory Committee will hear and discuss a report by the agency, as mandated in Section 17 of the Best Pharmaceuticals for Children Act (BPCA), on adverse event reports possibly related to clofarabine (CLOLAR), irbesartan (AVAPRO), sibutramine (MERIDIA), and the mixed salts amphetamine product (ADDERALL). In continuation of a prior committee discussion of adverse events for the class of methylphenidate products used to treat attention deficit hyperactivity disorder (ADHD), the committee will hear and discuss neuropsychiatric adverse events possibly related to other approved ADHD medications. The presentations will focus on neuropsychiatric adverse event reports and clinical trial data from approved ADHD medications. The committee will also receive an update on efforts to better understand cardiovascular adverse events possibly related to ADHD medications.

The background material will become available no later than the day before the meeting and will be posted under the Pediatric Advisory Committee Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2006 and scroll down to Pediatric Advisory Committee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 8, 2006. Oral presentations from the public will be scheduled on March 22, 2006, between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by March 8, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Jan N. Johannessen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 24, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–1223 Filed 1–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 23, 2006, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg,The Ballrooms, 620 Perry Pkwy, Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Cicely Reese, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, Fax: 301–827–6776, e-mail: *ReeseCi@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512544. Please call the Information Line for up-to-date information on this meeting. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. Click on the year 2006 and scroll down to the

''Psychopharmacologic Drugs Advisory Committee'' meeting.

Agenda: The committee will discuss new drug application (NDA) 20–717, S–019, PROVIGIL (100 milligrams (mg), 200 mg, 85 mg, 170 mg, 255 mg, 340 mg, and 425 mg) Tablets, Cephalon, Inc.; the proposed indication is for the treatment of attention deficit hyperactivity disorder (ADHD).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 15, 2006. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 15, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cicely Reese at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 24, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–1222 Filed 1–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held via teleconference on February 17, 2006, from 1 p.m. to 5:30 p.m.

Location: National Institutes of Health (NIH) campus, Food and Drug Administration, Bldg. 29B, conference rooms A and B, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by teleconference. The public is welcome to attend. A speakerphone will be provided at the specified location for public participation in this meeting. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the internet at *http://www.nih.gov/about/visitor/index.htm*. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Visitors must show two forms of identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Dr. entrance of the campus which is located on Wisconsin Ave. (the medical center metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Christine Walsh or Denise Royster, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–71), 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the selection of strains to be included in the influenza virus vaccine for the 2006–2007 season.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 10, 2006. Oral presentations from the public will be scheduled between approximately 3:30 p.m. and 4:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 10, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 24, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–1224 Filed 1–31–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Leukocyte Antibodies Prevalence (LAP) Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Leukocyte Antibodies Prevalence (LAP) Study. *Type of Information Collection Request: NEW. Need and Use of Information Collection:* The two current hypotheses for pathogenesis of transfusion-related acute lung injury (TRALI) include the development of acute pulmonary insufficiency from immune and non-immune causes. The immune mediated mechanism

postulates that passively transferred anti-leukocyte antibodies from blood donors are responsible for TRALI. The donor antibodies implicated in TRALI include antibodies directed towards HLA class I and class II antigens, and anti-neutrophil antibodies. The LAP Study is a cross-sectional multi-center study to measure the prevalence of HLA and neutrophil antibodies in blood donors with or without a history of blood transfusion or pregnancy, and the development of a repository of blood samples obtained from these donors. Specifically, 7,900 adult blood donors across six blood centers participating in the Retrovirus Epidemiology Donor Study II (REDS–II) will be enrolled in the study. Eligible donors will be asked to complete a short questionnaire on their transfusion history (ever, and date of last transfusion) and, for female donors, questions on pregnancy history (ever, number and outcome of pregnancies, last pregnancy). Each donor will also be asked to provide a sample of blood which will be tested for the presence of HLA class I and class II antibodies. This data will help us evaluate variations in HLA antibody prevalence based on blood transfusion and pregnancy history and time since the last immunizing event. Further, neutrophil specific antibodies will be measured in those blood donors who have HLA antibodies. Also, donors with neutrophil antibodies will be tested to determine their neutrophil phenotype using routine serologic and DNA methods, since individuals homozygous for certain neutrophil antigens are more prone to develop certain neutrophil antibodies. The results from testing HLA positive donors for neutrophil antibodies in this primary study could be used to develop an optimal testing strategy for large number of donors using the stored repository samples. These data will provide the basis for calculating donor loss in the event that a TRALI prevention strategy is implemented that includes deferring donors with a history of transfusion or pregnancy or those with HLA or neutrophil antibodies. The second major goal of this study is to develop a repository of blood samples from well characterized blood donors whose detailed transfusion and pregnancy histories are known. Repository samples will be stored indefinitely. Although future research on repository samples is yet to be determined, they may be tested for studies designed to help transfusion safety and transfusion biology. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Adult Blood Donors. The annual reporting burden is a follows: *Estimated Number of Respondents:* 7,900; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.17; and *Estimated Total Annual Burden Hours Requested:* 1343. The annualized cost to respondents is estimated at: $24,174 (based on $18 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adult Blood Donors	7,900	1	0.17	1343

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Room 10142, 6701 Rockledge Drive, MSC 7950, Bethesda, MD 20892–7950, or call 301–435–0075, or e-mail your request to *nemog@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 20, 2006.

Charles M. Peterson,

Director, DBDR, National Institutes of Health.

[FR Doc. E6–1269 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: FDA Approvable Human DNA Diagnostic Test for Endometriosis

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in U.S. Patent Application Number 60/654,331 filed February 18, 2005, entitled ''Identification of Molecular Markers for Endometriosis in Blood Lymphocytes Using DNA Microarrays,'' to Ortho-Clinical Diagnostics, having a place of business in Raritan, NJ 08869. The contemplated exclusive license may be limited to an FDA approvable human DNA diagnostic test for endometriosis. The United States of America is the assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which are received by the National Institutes of Health on or before April 3, 2006 will be considered.

ADDRESSES: Requests for a copy of the patent, inquires, comments, and other materials relating to the contemplated license should be directed to: Marlene Astor, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–4426; Facsimile: 301–402–0220; e-mail: *ms482m@nih.gov.*

SUPPLEMENTARY INFORMATION: Endometriosis is a common, non-malignant gynecological disease that

affects up to twenty percent (20%) of women during their reproductive years. Endometriosis is characterized by the growth of endometrial tissue outside the uterus. This growth of tissue causes recurring severe pain and can lead to infertility. As the current procedure used for diagnosis is invasive and not entirely accurate, there is a need for a fast, accurate, and minimally invasive test to test for endometriosis.

Using DNA microarray analysis of blood lymphocytes, the inventors have identified two gene markers expressed in blood that are able to discriminate between those women who have endometriosis and those that don't. This new technology would be minimally invasive and quick using a blood sample from a patient.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 23, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–1277 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Rapid Anti-Depressant Response Produced by Low Dose Treatment with Anti-Muscarinic Drugs

Maura Furey and Wayne Drevets (NIMH).

U.S. Patent Application No. 11/137,114 filed 25 May 2005 (HHS Reference No. E–175–2004/0–US–01).

Licensing Contact: Norbert Pontzer; 301/435–5502; *pontzern@mail.nih.gov.*

Available for licensing are new methods of rapidly treating depression. The drugs currently used to treat depression work by increasing the activity at serotonin, norepinephrine and perhaps dopamine receptors in the CNS. However these drugs are effective in only 60–70% of patients, require 3–4 weeks of treatment before clinical improvement and have many side effects. These inventors have shown that in human patients, the administration of anti-muscarinic agents produces a rapid, prolonged alleviation of depressive symptoms. Beginning the day following administration of the anti-muscarinic agent, a majority of patients show significant improvements in mood, anxiety, sleep and other depressive symptoms that last days or weeks. The very slow dissociation of some muscarinic agents from their receptors may account for the prolonged therapeutic effects.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: January 23, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–1286 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference: Cesarean Delivery on Maternal Request; Notice

Notice is hereby given of the National Institutes of Health (NIH) ''State-of-the-Science Conference: Cesarean Delivery on Maternal Request'' to be held March 27–29, 2006, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on March 27 and 28, and at 9 a.m. on March 29, and will be open to the public.

Despite the national goal of reducing rates of cesarean delivery to 15 percent of births established as part of Healthy People 2010, cesarean delivery rates have continued to increase. In 2003, 1.1 million or 27.5 percent of births in the U.S. were by cesarean delivery. An estimated 2.5 percent of births that year were cesarean deliveries performed on request, in the absence of medical necessity, and the rate of cesareans on request appears to be growing rapidly over time.

The potential benefits of elective cesarean delivery as compared to vaginal delivery are not fully understood but are thought to include decreased risk of urinary incontinence, pelvic organ prolapse, anal sphincter damage and fecal incontinence. Elective cesarean delivery also has the benefit of flexible timing for mother and physician. However, like any major surgical procedure, there are risks associated with cesarean delivery. Risks that are known to be higher for cesarean deliveries than for vaginal delivery include adverse reactions to anesthesia, breathing problems, bleeding, infection, urinary tract injury, and injury to the baby. In addition, recovery time following cesarean delivery is typically longer than for vaginal delivery.

Given these risks, any decision to deliver by cesarean delivery when vaginal delivery is also available should be informed by the best possible information regarding potential health outcomes, good and bad, for both mother and baby. Toward that end, the National Institute of Child Health and Human Development and the Office of Medical Applications of Research of the National Institutes of Health will convene a State-of-the-Science Conference from March 27 to 29, 2006, to assess the available scientific evidence relevant to the following questions:

• What is the trend and incidence of cesarean delivery over time in the United States and in other countries?

• What are the short-term (under one year) and long-term benefits and harms to mother and baby associated with cesarean by request versus attempted vaginal delivery?

• What factors influence benefits and harms?

• What future research directions need to be considered to get evidence for making appropriate decisions regarding cesarean on request or attempted vaginal delivery?

An impartial, independent panel will be charged with reviewing the available published literature in advance of the conference, including a systematic literature review commissioned through the Agency for Healthcare Research and Quality. The first day and a half of the conference will consist of presentations by expert researchers and practitioners, and public discussions. On Wednesday, March 29, the panel will present a statement of its collective assessment of the evidence to answer each of the questions above. The panel will also hold a press conference to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later.

The primary sponsors of this meeting are the National Institute of Child Health and Human Development and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667, or by sending e-mail to *consensus@mail.nih.gov.* American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov*.

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm*.

Dated: January 24, 2006.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. E6–1272 Filed 1–31–06; 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 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 Cancer Institute Special Emphasis Panel, SBIR Topic 204, ''Plant Genomic Models for Establishing Physiological Relevance of Bioactive Components as Cancer Protectants''.

Date: March 9, 2006.

Time: 10:15 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marvin L. Salin, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(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: January 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–910 Filed 1–31–06; 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 the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 562b(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 the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 220, ''Chemical Optomization and Structure-Activity Relationship''.

Date: March 9, 2006.

Time: 11:45 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marvin L. Salin, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(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: January 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–912 Filed 1–31–06; 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 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 Cancer Institute Special Emphasis Panel, SBIR Topic 222, ''Investigation of the Production Parameters of Microbial Natural Product''.

Date: March 9, 2006.

Time: 8:45 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marvin L. Salin, PhD, Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(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: January 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–913 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of 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 National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council on Minority Health and Health Disparities.

Date: February 21, 2006.

Closed: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892.

Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, IC Health Disparities Research Report, NCMHD Program Highlights, and other business of the Council.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892.

Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–435–2135, *brooksd@ncmhd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: January 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–917 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 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 Human Genome Research Institute Special Emphasis Panel, NHGRI HapMap Cell and DNA Repository Review.

Date: February 17, 2006.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–918 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

Date: March 7–9, 2006.

Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Eliane Lazar-Wesley, PhD., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892–8401, 301–451–4530, *el6r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–911 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel, NINR Institutional Training (T32) Grant Applications.
Date: February 7, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: John E. Richters, PhD., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research/NIH, 6701 Democracy Blvd., Room 713, MSC 4870, Bethesda, MD 20817, (301) 594–5971, *jrichters@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. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–914 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel, Develop Methods for Stimulating International Research Collaborations.
Date: February 1, 2006.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate contract proposals.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.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. 93.306, 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: January 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–915 Filed 1–31–06; 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, T Cell Tolerance.
Date: February 21, 2006.
Time: 3 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3121, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Paul A. Amstad, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856; Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–916 Filed 1–31–06; 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 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: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.
Date: February 9–10, 2006.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: David J. Remondini, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@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 and Special Emphasis Panel, Topics in Bacterial Pathogens.
Date: February 9, 2006.
Time: 9 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Denver International Airport, Concourse A—Level 4 North, Room 4042, 8500 Pena Boulevard, Denver, CO 80249–6205.
Contact Person: Joseph D. Mosca, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@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: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.
Date: February 14–15, 2006.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Daniel R. Kenshalo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innate Immunity and Inflammation.
Date: February 16–17, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Tina McIntyre, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—B Study Section.
Date: February 16–17, 2006.
Time: 8:30 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: Betty Hayden, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.
Date: February 17, 2006.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Chhanda L. Ganguly, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics A Study Section.
Date: February 20–21, 2006.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.
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: Brain Disorders and Clinical Neuroscience Integrated Review Group, Anterior Eye Disease Study Section.
Date: February 20–21, 2006.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Christine A. Livingston, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.
Date: February 21–22, 2006.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
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.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.
Date: February 21–22, 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: Michael A. Steinmetz, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.
Date: February 21–22, 2006.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Everett E. Sinnett, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group, Gastrointestinal Mucosal Pathobiology Study Section.
Date: February 21–22, 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: Peter J. Perrin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Depression and Development Disorders.
Date: February 21, 2006.
Time: 9 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
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: Respiratory Sciences Integrated Review Group, Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 22–23, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: George M. Barnas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Chemo/Dietary Prevention Study Section.

Date: February 22–24, 2006.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Sally A. Mulhern, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: February 22–24, 2006.

Time: 6 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Julius Cinque, MS., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@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: January 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–919 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: ''Vasostatin as Marrow Protectant'' and ''Use of Calreticulin and Calreticulin Fragments To Inhibit Endothelial Cell Growth and Angiogenesis and Suppress Tumor Growth''

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1) (i), announces that the Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent No. 6,596,690 B2 entitled ''Vasostatin as Marrow Protectant'' (HHS Reference E–230–2000/0); U.S. Patent Application No. 09/807,148 filed April 5, 2001, entitled ''Use of Calreticulin and Calreticulin Fragments To Inhibit Endothelial Cell Growth and Angiogenesis and Suppress Tumor Growth'' (HHS Reference E–082–1998/0–US–03); PCT Application No. PCT/US99/23240 filed October 5, 1999 entitled ''Use of Calreticulin and Calreticulin Fragments To Inhibit Endothelial Cell Growth and Angiogenesis and Suppress Tumor Growth'' (HHS Reference E–082–1998/0–PCT–02); to RxKinetix, Inc. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to development and sale of a pharmaceutical product useful in protecting bone marrow stem cells from the toxic effects of chemotherapy and radiotherapy.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before April 3, 2006 will be considered.

ADDRESSES: Requests for copies of the patent and/or patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Mojdeh Bahar, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 435–2950; Facsimile: (301) 402–0220; E-mail: *baharm@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology claimed in the aforementioned patents is based on the discovery of the calreticulin N-domain (vasostatin) and the three previously uncharacterized properties of calreticulin. First, calreticulin N-domain is shown to stimulate the proliferation and survival in vitro of hematopoietic cells in the presence of previously identified growth factors. Second, Vasostatin is shown to protect hematopoietic cells in vitro from toxicity induced by a variety of chemotherapeutic agents. Third, Vasostatin is shown to protect a subject from toxicity to the hematopoietic system induced by chemotherapy or irradiation.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

This is a modification to the notice published in 70 FR 96, January 3, 2005.

Dated: January 23, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–1389 Filed 1–31–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2005–0057]

Software Assurance Program: Building Better Quality and More Secure Software

AGENCY: National Cyber Security Division, DHS.

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform the public and interested

security partners that two draft documents are being released by the Department of Homeland Security (DHS) for comment prior to publication:

• *Security in the Software Lifecycle*—Intended to assist application software developers and project managers in defining a strategy to produce more secure software.

• *Secure Software Assurance—Common Body of Knowledge*—Intended to assist college-level educators and private industry trainers in creating a curriculum for software assurance.

ADDRESSES: If you would like to review the draft *Security in the Software Lifecycle* and the draft *Secure Software Assurance—Common Body of Knowledge* you may access the documents and the comment forms through one of the following methods:

• *Build Security In* Web site: *http://buildsecurityin.us-cert.gov*—click on ''Additional Resources'' Tab. The documents are located in the ''Supplementary Department of Homeland Security Resources'' and ''Software Assurance Common Body of Knowledge (CBK)'' sections.

• Mail self-addressed stamped envelope to: Joe Jarzombek, Director for Software Assurance, National Cyber Security Division, Department of Homeland Security, Washington, DC 20528 (Postage: $5.00 for one document/ $8.00 for both documents).

If you desire to submit comments, they must be received by February 21, 2006. A comment form is available on the *Build Security In* Web site (*http://buildsecurityin.us-cert.gov*) to facilitate detailed comments. Comments must be identified by DHS–2005–0057 and submitted by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Refer to Docket DHS–2005–0057. Follow the instructions for submitting comments. Detailed comment forms can be uploaded.

• Mail: Joe Jarzombek, Director for Software Assurance, National Cyber Security Division, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: *DHS Software Assurance Program:* Joe Jarzombek, Director for Software Assurance, National Cyber Security Division, Department of Homeland Security, Washington, DC 20528, 703–235–5126 or *joe.jarzombek@dhs.gov.*

SUPPLEMENTARY INFORMATION: In collaboration with other government agencies, academia, and private industry, DHS seeks to reduce software vulnerabilities, minimize exploitation, and address means to improve capabilities to routinely develop and deploy quality and trustworthy software. In furtherance of those goals, DHS established the Software Assurance Program.

The DHS Software Assurance Program is grounded in the *National Strategy to Secure Cyberspace* issued by President Bush in February 2003. DHS began the Software Assurance Program as a focal point to partner with the private sector, academia, and other government agencies in order to improve software development and acquisition processes. The Program seeks to reduce software vulnerabilities, minimize exploitation, and address means to improve capabilities to routinely develop and deploy quality and trustworthy software products—enabling more resilient assets within the critical infrastructure.

DHS developed the following comprehensive approach to address software assurance in collaboration with industry, academia, and government partners:

• People—Focus on software developers (includes education and training) and users

• Process—Focus on developing sound practices and practical guidelines

• Technology—Focus on software evaluation tools and R&D requirements

• Acquisition—Focus on standards, specifications, acquisition language

As part of the Software Assurance Program, DHS now seeks comments from the public and interested security partners on two draft documents now being released prior to formal publication:

• *Security in the Software Lifecycle*—Intended for application software developers and project managers who wish to increase their understanding of security and quality issues related to software and its production, and to improve their own practices in order to produce more secure and better quality application software. This document should provide enough information to assist the reader in defining a strategy for adapting or expanding existing processes and practices to produce more secure software that also achieves a higher degree of quality, reliability, and integrity.

• *Secure Software Assurance—Common Body of Knowledge*—Primarily intended for college-level educators and private industry trainers to use as they create curriculum for software assurance which draws upon multi-disciplinary elements of software engineering, information assurance, project management, systems engineering, safety and security, and acquisition. While some of these disciplines already have a body of knowledge, software assurance has not had a formal source for educators to create curriculum. This document is intended to fill that need.

The information in these documents is not intended to represent a standard or policy mandate by DHS. On the contrary, the documents represent a collection of consensus-based, ''sound practices'' derived from across government, industry, and academia, both in the U.S. and abroad. As such, they should be seen primarily as tools for educating developers and software project managers.

DHS will consider all timely and pertinent comments received prior to finalizing these documents.

Dated: January 23, 2006.

Robert B. Stephan,

Assistant Secretary for Infrastructure Protection.

[FR Doc. E6–1346 Filed 1–31–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–23696]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: TSAC will meet on Thursday, March 2, 2006, from 8 a.m. to 3:30 p.m. The Towing Vessel Inspection Working Group will meet on Tuesday, February 28, 2006, from 9 a.m. to 4:30 p.m. The Towing Vessel Inspection Working Group will meet again on Wednesday, March 1, 2006, from 8:30 a.m. to 2:30 p.m. followed by a general plenary meeting, to discuss the status of other working groups, until 5 p.m. These meetings may close early if all business is finished. Written material for and requests to make oral presentations at the meetings should reach the Coast Guard on or before February 21, 2006. Requests to have a copy of your material distributed to each member of the Committee or working groups prior to the meetings should reach the Coast Guard on or before February 15, 2006.

ADDRESSES: TSAC will meet in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington,

DC 20593–0001. The working group will first meet in the same room and then, if necessary, move to separate spaces designated at that time. Send written material and requests to make oral presentations to Mr. Gerald P. Miante, U.S. Coast Guard Headquarters, G–PSO–1, Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2006–23696.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, telephone 202–267–0214, fax 202–267–4570, or e-mail at: *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Committee Meeting

The agenda includes the following items:

(1) Status Report of the Commercial/Recreational Boating Interface Working Group;

(2) Status Report of the Mariner Deaths during Nighttime Barge Fleeting Operations Working Group;

(3) Status Report of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW) Implementation Working Group;

(4) Status Report of the Towing Vessel Inspection Working Group;

(5) Status Report of the Licensing Implementation Working Group;

(6) Status Report of the Towing Vessel Horsepower Working Group;

(7) Status Report of the Towing Vessel Bridge Visibility Working Group; and

(8) Presentation of a Draft Task Statement on Review of the AV Kastner/Buchanan 14/Swift Collision

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than February 21, 2006. Written material for distribution at a meeting should reach the Coast Guard no later than February 21, 2006. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit 20 copies to the Assistant Executive Director no later than February 15, 2006. You may also submit this material electronically to the e-mail address in **FOR FURTHER INFORMATION CONTACT**, no later than February 21, 2006. Also, at the Chair's discretion, members of the public may present comment at the end of the Public Meeting. Please understand that the Committee's schedule may be quite demanding and time for public comment may be limited.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: January 25, 2006.

H.L. Hime,

Acting Director of Prevention Standards.

[FR Doc. E6–1247 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Write Your Own (WYO) Company Participation Criteria; New Applicant.

OMB Number: 1660–0038.

Abstract: The Federal government is a guarantor of flood insurance coverage issued under the WYO arrangement. To determine eligibility for participation in the WYO program, the NFIP requires a on-time submission of data demonstrating insurance companies qualification.

Affected Public: Business or Other For Profit.

Number of Respondents: 5.

Estimated Time per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 35.

Frequency of Response: Per request.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: January 25, 2006.

George S. Trotter,

Acting, Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–1327 Filed 1–31–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Emergency Management Institute Residential Course Evaluation Form.

OMB Number: 1660–0034.

Abstract: Students attending the Emergency Management Institute resident program courses at FEMA's NETC will be asked to complete a course evaluation form. The information will be used by EMI staff and management to identify problems with course materials, evaluate the quality of the course delivery, facilities, and instructors. The data received will enable them to recommend changes in course materials, student selection criteria, training experience and classroom environment.

Affected Public: State, Local, or Tribal Government, Federal Government, Individuals and Households.

Number of Respondents: 10,027.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,671 hours.

Frequency of Response: Per course.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: January 25, 2006.

George S. Trotter,

Acting, Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–1328 Filed 1–31–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed, revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning National Defense Executive Reserve Personal (NDRP) Qualifications Statement.

SUPPLEMENTARY INFORMATION: The NDER program was established by the Defense Production Act of 1950, as amended, section 710(e). Under Executive Order 12919, National Defense Industrial Resources Preparedness, June 3, 1994, part VI, section 601, the Director of the Federal Emergency Management Agency coordinates the NDER program activities of departments and agencies that have NDER units. The NDER is composed of persons with recognized expertise from industry, organized labor, professional groups, and academia to serve in executive positions in the Federal Government during the event of an emergency that requires such employment. The head of a department or agency may activate an NDER unit in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists, and that the activation of the unit is necessary to carry out the emergency program functions of the department or agency.

Collection of Information

Title: The National Defense Executive Reserve Personal Qualifications Statement.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0001.

Form Numbers: FEMA Form 85–3, National Defense Executive Reserve Personal Qualifications Statement.

Abstract: The NDER is a Federal government program coordinated by FEMA. To become a member of the NDER, individuals with the requisite qualifications must complete a FEMA Form 85–3 is an application form that is used by Federal departments and agencies to fill NDER vacancies and to ensure that individuals are qualified to perform in the assigned emergency positions. FEMA reviews the application form to ensure that the candidate meets all basic membership qualifications for the Executive Reserve; ensures that the applicant is not already serving in a Federal department or agency sponsored unit; and, in some cases, determines the Federal department or agency best suited for the applicant.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 15 hours.

ANNUAL BURDEN HOURS

Project/Activity (Survey, Form(s), Focus Group, Worksheet, etc.)	No. of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (A×B)	Total annual burden hours (A×B×C)
FEMA Form 85–3	30	1	.5 hr (30 mins.)	30	15
TOTAL	30	1	.5	30	15

Estimated Cost: The total cost (all respondents combined) to respondents is $1,693.00 with the average cost per respondent of $34.00.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Margaret B. Roberts, Program Manager, National Defense Executive Reserve, Response and Recovery Directorate at (202) 646–3564. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: January 25, 2006.

George Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–1330 Filed 1–31–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed, revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Flood Mitigation Assistance program requirements.

SUPPLEMENTARY INFORMATION: The Program was created with the enactment of the National Flood Insurance Reform Act of 1994. Section 553 of the Act authorizes a mitigation assistance program which FEMA has designated Flood Mitigation Assistance (FMA). Section 554 establishes the National Flood Mitigation Fund to provide assistance under section 553. FMA regulations implement requirements of section 553 and 554 of the Act.

FMA was developed to address concerns regarding repetitively or substantially damaged structures, or both, and the associated claims on the National Flood Insurance Fund. The overall goal of FMA is to fund flood damage to buildings, manufactured homes, and other insurable structures.

The purpose of the planning grants is to develop or update a Flood Mitigation Plan that FEMA must approve before approving a project grant. Native American tribes or authorized tribal organizations may submit applications to the State POC or directly to the FEMA Regional Director.

The regulations outline a basic planning process with minimum standards for the Flood Mitigation Plans. Existing plans, such as those credited through the Community Rating System or those prepared in conformance with section 322 of the Stafford Act, as amended by section 104 of the Disaster Mitigation Act of 2000, may meet the requirements of FMA with few or no modifications. The plan should summarize the planning process, and should be reviewed periodically by the community in order to remain a viable document. Flood Mitigation Plans must be formally adopted by the legal entity submitting the plan for FEMA approval.

Collection of Information

Title: Flood Mitigation Assistance—Flood Mitigation Plan.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0075.

Form Numbers: None.

Abstract: States and communities must have a FEMA approved flood mitigation plan before FEMA will award project grant assistance to a State or community applicant.

FEMA and the States will use local community flood mitigation plans to identify the need to provide technical assistance to local governments lacking sufficient resources to complete FMA grant applications. Secondly, and more importantly, the local or State government that develops the plan will use it to make land use decisions, implement zoning changes, encourage smarter development, and implement projects to reduce the impacts of flooding on insurable structures.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 250,560.

ANNUAL BURDEN HOURS

Project/Activity (Survey, Form(s), Focus Group, Worksheet, etc.)	No. of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
	(A)	(B)	(C)	(A×B)	(A×B×C)
New Flood Mitigation Plans	120	1	2080	120	249,600
Local Mitigation Plan Review by States	56	2.14	8	120	960
Total	176	—	2088	240	250,560

Estimated Cost: $6,592,234.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rozenberg, Section Chief, Pre-Disaster Mitigation Section at (202) 646–3321. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: January 26, 2006.

George Trotter,

Acting, Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–1331 Filed 1–31–06; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Inspection of Insured Structures by Communities.

OMB Number: 1660–0045.

Abstract: The community inspection report is needed to effectively implement the inspection procedures for building structures in Monroe County, the City of Marathon, and the Village of Islamorada, Florida comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The inspection procedure requires owners of insured buildings (policyholders) obtain an inspection from community floodplain management officials and submit a community inspection report as a condition of renewing Standard Flood Insurance Policy (SFIP) on buildings.

Affected Public: Individual or Households, and Business or Other For Profit.

Number of Respondents: 4,000.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours:[1] 6,304 hours.

Frequency of Response: One time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: January 25, 2006.

George Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–1332 Filed 1–31–06; 8:45 am]

BILLING CODE 9110–11–P

[1] The total burden hours have changed since publication of the 60-day **Federal Register** Notice dated November 23, 2005, to include: (1) The number of respondent and responses have increased; (2) A change in the calculation for compliant and non-complaint building structures.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Federal Hotel and Motel Fire Safety Declaration Form.

OMB Number: 1660–0068.

Abstract: Public Law 101–391 requires FEMA[1] to establish and maintain a National Master List (NML) of fire safe places of public accommodations. The information collected will be available electronically to the general public identifying properties meeting the specified level of fire safety equipment as required in the public law. It is also available to Federal employees required by Public Law 101–391 to stay at properties on the NML when on official travel.

Affected Public: Business or other for-Profit, Not-For-Profit Institutions, and the Federal Government.

Number of Respondents: 2,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 500.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to

[1] The Federal Hotel and Motel Fire Safety Declaration Form is administered by the United States Fire Administration, which is currently being transferred to the newly created Preparedness Directorate of the Department of Homeland Security. During this transition FEMA, also part of the Department of Homeland Security, will continue to support this program as the new Directorate stands up. Ultimately this data collection will be transferred to the Preparedness Directorate.

the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before March 3, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: January 25, 2006.

George Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–1333 Filed 1–31–06; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the Federal Emergency Management Agency announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: February 14, 2006.

Place: Building R, Room 108, National Emergency Training Center, Emmitsburg, Maryland.

Time: February 14, 2–4 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before February 7. Dial-in information will be provided to those wishing to participate via telephone.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

The National Fire Academy Board of Visitors is administered by the United States Fire Administration, which is currently being transferred to the newly created Preparedness Directorate of the Department of Homeland Security. During this transition FEMA, also part of the Department of Homeland Security, will continue to support this program as the new Directorate stands up. Ultimately this function will be transferred to the Preparedness Directorate.

Dated: January 20, 2006.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 06–939 Filed 1–31–06; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0128; Marine Turtle Conservation Fund Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act. The information collected for the Marine Turtle Conservation Fund Grant Program is needed to review project proposals in accordance with the Marine Turtle Conservation Act (Pub. L. 108–266).

DATES: You must submit comments on or before March 3, 2006.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection submission, explanatory information, and/or related forms, contact Hope Grey, Information Collection Clearance Officer, at 703–358–2482 or electronically at *hope_grey@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The OMB control number for the collection of information for the Marine Turtles Conservation Fund Grants Program is 1018–0128, which expires on January 31, 2006. We have sent a request to OMB to renew its approval of this collection of information. OMB has up to 60 days to approve or disapprove our request for renewal, but may respond in as early as 30 days. To ensure consideration, send your comments to OMB by the date listed in the **DATES** section. Federal agencies 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.

On August 16, 2005, we published in the **Federal Register** (70 FR 16148) a notice of our intent to request information collection authority from OMB. In that notice, we solicited comments for 60 days, ending on October 17, 2005. We received comments from one individual. The commenter did not address the necessity, clarity, or accuracy of the information collection, but instead provided general commentary on how the funds provided to this Federal program could be better used if given to a nonprofit organization. We have not made any changes to our information collection as a result of the comment.

Proposals submitted for funding under the Marine Turtle Conservation Act are subject to a panel review, comprised of in-house and select outside technical experts. The information collected under this

program's Notice of Funding Availability includes: a project summary and narrative; letter of appropriate government endorsement; brief curricula vitae for key project personnel; and complete standard forms 424, 424a and 424b. Proposals from U.S. applicants also include a copy of the organization's Negotiated Indirect Cost Rate Agreement (NICRA) (if applicable). The project summary and narrative is the basis for this information collection request for approval, and allows the review panel to assess how well the project addresses the priorities identified by the Act. As all of the projects under this Act will be conducted outside the United States, the letter of appropriate government endorsement ensures that the proposed activities will not meet with local resistance or work in opposition to locally identified priorities and needs. Brief curricula vitae for key project personnel allow the review panel to assess the qualifications of project staff to effectively carry out the project goals and objectives. Although the standard forms are only required for U.S. financial assistance applicants, we ask all applicants to submit these forms in order to allow for more uniformity across all proposals. As all Federal entities are required to honor the indirect cost rates an organization has negotiated with their cognizant agency, we require all organizations with a NICRA to submit the agreement paperwork with their proposals to verify how their rate is applied in their proposed budget.

We believe the information requested in this collection, outside of the required standard forms, is the minimum information necessary to allow the review panel sufficient technical, financial, and administrative information to determine the merits of each proposal, and to select the best projects for funding.

Title: Marine Turtle Conservation Fund Grant Program.

OMB Control Number: 1018–0128.

Service Form Numbers: None.

Frequency of Collection: Annually.

Description of Respondents: Foreign governments; domestic and foreign nongovernmental organizations, and individuals.

Total Annual Responses: 95 responses (55 proposals, 40 reports).

Total Annual Burden Hours: 1260 hours (12 hours/proposal and 15 hours/report).

Several recent applicants provided comments on (1) the clarity of the submission instructions, (2) the estimated length of time to complete a submission, and (3) ways to improve the documents. Most of the comments related to difficulties encountered filling in the standard Federal forms where English was not the applicant's first language. To provide better service to this worldwide program, we are developing additional instructions for filling in the standard forms in a variety of languages including Spanish, French and Portuguese. We will publish these instructions on our Web site in the future.

We again invite comments concerning this collection on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility; (2) the accuracy of the agency's estimate of burden on the public; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

Dated: January 26, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–1315 Filed 1–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Proposed Candidate Conservation Agreement With Assurances for the Columbia Spotted Frog at Sam Noble Springs, Owyhee County, ID

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The State of Idaho (Idaho Department of Lands and the Idaho Department of Fish and Game) have applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Candidate Conservation Agreement with Assurances for the Columbia spotted frog at Sam Noble Springs, Owyhee County, Idaho (Agreement) between the Service, and the State of Idaho. Also available is a draft environmental assessment evaluating the proposed Agreement and permit.

Under the proposed Agreement, the parties would implement conservation measures for Columbia spotted frogs (*Rana luteiventris; CSF*) over approximately 680 acres (275 ha) in Owyhee County, Idaho. The intent of the proposed Agreement would be to conserve CSFs by protecting and enhancing habitat and populations, in a manner that is consistent with the State's land use activities and the Agreement. The proposed term of the Agreement and the permit is 22 years. The Service has prepared a draft Environmental Assessment for approval of the Agreement and issuance of the permit.

We request comments from the public on the permit application, proposed Agreement, and the draft Environmental Assessment. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

DATES: Written comments should be received on or before March 3, 2006.

ADDRESSES: Comments should be addressed to Carmen Thomas, Project Biologist, Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (telephone: 208/378–5243; facsimile: 208/378–5262).

FOR FURTHER INFORMATION CONTACT: Carmen Thomas at the above address or telephone 208/378–5243.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the individual named above. You also may make an appointment to view the documents at the above address during normal business hours.

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily implement conservation activities on their property to benefit species that are proposed for listing under the Act, or other sensitive species. Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts, and reduce threats to unlisted species by assuring them they will not be subjected to increased property use restrictions, beyond those identified in the agreement, if the species is listed in the future under the Act. Application requirements and issuance criteria for enhancement of survival permits through Candidate Conservation Agreements with Assurances are found in 50 CFR 17.22(d) and 17.32(d).

Populations of the CSF are found from Alaska and British Columbia to Washington east of the Cascades, eastern Oregon, Idaho, the Bighorn Mountains of Wyoming, the Mary's, Reese, and Owyhee River systems of Nevada, the Wasatch Mountains, and

the western desert of Utah (Green *et al.* 1997). Genetic evidence (Green *et al.* 1997) indicates that CSFs may be a single species with three subspecies, or may be several weakly-differentiated species. The Service currently recognizes four populations based on disjunct distribution: Northern, Great Basin, Wasatch, and West Desert. CSFs are believed to be abundant within the Northern population of the species' range from Alaska to Wyoming (Gomez 1994). The other three disjunct populations (Great Basin, Wasatch, and West Desert) received candidate status in 1993 based on the loss of subpopulations in a number of areas in Nevada (58 FR 27260). At that time, the Great Basin population was given a listing priority of 9; in 2001 the priority was raised to 3 (the highest listing rank possible for a subspecies), based upon the discovery of *Chytridiomycosis* in the Owyhee subpopulation, declining numbers, and the imminence of threats. The CSF is known to occur in Owyhee and Twin Falls counties, Idaho.

Columbia Spotted Frogs at Sam Noble Springs are part of the Great Basin Population of frogs, which is a candidate for listing under the Act. Threats to this population mainly include impacts to, or loss of, habitat—specifically, the loss of perennial wetlands used for feeding, breeding, hibernating, and migrating. Improperly managed livestock grazing practices and water use in areas where frogs occur may contribute to habitat loss. The State of Idaho has an opportunity at Sam Noble Springs to address effects of livestock grazing on CSF habitat while continuing to meet their management needs. By entering into the proposed Agreement with the Service, the State of Idaho would help ensure long-term protection of a population of a species that is a candidate for listing under the Act, by significantly reducing the risk of impacts to CSF habitat, while reducing any long-term regulatory risk to their ability to generate funds from those lands if CSFs were listed and take prohibitions limited their ability to lease those lands for livestock grazing.

As a result of this conservation opportunity and potential regulatory concern, the State of Idaho developed the proposed Candidate Conservation Agreement with Assurances for the CSF at Sam Noble Springs, Owyhee County, Idaho, in cooperation with the Service, and is applying to the Service for a permit under section 10(a) of the Act, authorizing incidental take of CSFs.

Under the proposed Agreement and permit, the State of Idaho and the Service would implement various conservation measures on the Sam Noble Springs parcel. The conservation measures under the proposed Agreement are intended to reduce all threats to the CSF that are controllable by the State of Idaho within the project area. Conservation measures that would be implemented within the project area include: (1) Altered timing and intensity of livestock grazing; (2) installation of grazing management structures; (3) creation of additional livestock watering ponds; (4) installation and operation of a water collection facility serving a livestock watering trough; (5) maintenance of existing livestock watering ponds; (6) management of vegetation in and adjacent to occupied CSF habitat; and (7) monitoring of CSF populations and habitat condition to determine effectiveness and compliance with the Agreement. If issued, the permit would authorize incidental take of CSFs as a result of specified land management practices related to agriculture, livestock management, and CSF habitat restoration.

We provide this notice pursuant to section 10(c) of the Endangered Species Act and implementing regulations for the National Environmental Policy Act (40 CFR 1506.6), in order to solicit public review and comments on the permit application and a related environmental assessment. Comments received will be considered in the course of our evaluation of the proposed permit under section 10(a) of the Endangered Species Act and National Environmental Policy Act. We will not make our final decision on the application until after completion of the comment period and will fully consider all comments received during the comment period.

Dated: January 26, 2006.

David J. Wesley,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. E6–1302 Filed 1–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the Fish and Wildlife Service, announce a meeting of the Klamath River Basin Fisheries Task Force. The meeting is open to the public. The purpose of the meeting is to allow affected interests to continue providing recommendations to us on implementation of our program to restore anadromous fisheries, including salmon and steelhead, in the Klamath River in California and Oregon.

DATE: The meeting will be from 9 a.m. to 5 p.m. on February 8, 2006, and from 8 a.m. to 1 p.m. on February 9, 2006.

ADDRESSES: The meeting will be held at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), we announce a meeting of the Klamath River Fisheries Task Force. This task force was established under the Klamath River Basin Fishery Restoration Act (16 U.S.C. 460ss *et seq.*).

For background information on the Task Force, please refer to the **Federal Register** notice of the initial meeting (July 8, 1987, 52 FR 25639).

Dated: January 25, 2006.

John Engbring,

Acting California/Nevada Operations Manager, California/Nevada Office, Fish and Wildlife Service.

[FR Doc. E6–1294 Filed 1–31–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Amendment to Notice of Availability of Draft Environmental Impact Statement for the Confederated Tribes of the Umatilla Indian Reservation's Proposed Coyote Business Park, Umatilla County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs is amending its Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Confederated Tribes of the Umatilla Indian Reservation's Proposed Coyote Business Park, Umatilla County, Oregon, which was published in the **Federal Register** on December 16, 2005 (70 FR 74844). This amendment adds 18 days to the public comment period. All of the other information in the December 16, 2005, notice remains unchanged.

DATES: Written comments on the DEIS must now arrive by February 17, 2006.

ADDRESSES: You may mail written comments to Jerry L. Lauer, Acting Superintendent, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, Oregon 97801; or hand carry written comments to Mr. Lauer at the Umatilla Agency, 46807 B Street, Mission, Oregon.

FOR FURTHER INFORMATION CONTACT: Jerry L. Lauer, (541) 278–3786.

SUPPLEMENTARY INFORMATION: Comments, including names and addresses of respondents, will be available for public review at the street address shown in the **ADDRESSES** section during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

This notice is published in accordance with § 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: January 24, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–1263 Filed 1–31–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK961–1410–HY–P; F–93724]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act, as amended by the Act of May 2, 2000, will be issued to Elim Native Corporation. The lands are located in Tps. 6 S., Rs. 15, 16, and 17 W.; Tps. 7 S., Rs. 16, 17, and 18 W.; and Tps. 8 S., Rs. 17 and 18 W., Kateel River Meridian, in the vicinity of Elim, Alaska, and contain approximately 45,881 acres. Notice of the decision will also be published four times in the *Nome Nugget.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 3, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Christy Favorite, by phone at (907) 271–5656, or by e-mail at *cfavorit@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Favorite.

Christy Favorite,

Land Law Examiner, Branch of Land Transfer Services.

[FR Doc. E6–1309 Filed 1–31–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice is a solicitation on behalf of the Secretary of the Interior for nominations to fill a vacancy on the Native American Graves Protection and Repatriation Review Committee. Nominations may be submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. Nominees must be traditional Native American religious leaders. Appointments are made by the Secretary of the Interior.

DATES: Postmark or hand-delivery deadline: April 3, 2006.

ADDRESSES:

Via U.S. Mail: Address nominations to Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1849 C Street NW (2253), Washington, DC 20240. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to U.S. Government offices, a copy of each mailed nomination should also be faxed to (202) 371–5197.

Via commercial delivery: Address nominations to Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005.

Via hand delivery: Address nominations to Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. C. Timothy McKeown, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, 1849 C Street NW (2253), Washington, DC 20240, telephone (202) 354–2202, e-mail *tim__mckeown@nps.gov.*

SUPPLEMENTARY INFORMATION: Required Nomination Information: Nominations must include the following information. Nominations that do not include all of the following information will be considered nonresponsive to this solicitation.

1. Nominations by Indian tribes or Native Hawaiian organizations: Nominations must be submitted on official tribal or organization letterhead with the nominator's original signature and daytime telephone number. Nominator must be the official authorized by his or her tribe or organization to submit nominations in response to this solicitation. The nomination must include a statement that the nominator is so authorized.

2. Nominations by traditional Native American religious leaders: Nominations must include a statement that the nominator is a traditional Native American religious leader and the nominator's daytime telephone number.

3. Information about nominees: All nominations must include the following information

a. Nominee's name, address, and daytime telephone number (required), and e-mail address (optional).

b. Nominee's resume or brief biography. The resume or biography should emphasize the nominee's NAGPRA experience. Nominations must include a statement by the nominator that the nominee is a traditional Native American religious leader.

General Information

1. The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.*

2. The Review Committee is responsible for –

a. monitoring the NAGPRA inventory and identification process;

b. reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;

c. facilitating the resolution of disputes;

d. compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;

e. consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;

f. consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and

g. making recommendations regarding future care of repatriated cultural items.

3. Seven members comprise the Review Committee. All members are appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee.

a. Three members are appointed from nominations by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders to represent the interests of Indian tribes, Native Hawaiian organizations, and traditional Native American religions. At least two of these members shall be traditional Native American religious leaders.

b. Three members are appointed from nominations submitted by national museum organizations and scientific organizations to represent the interests of such organizations.

c. One member is appointed from a list of persons proposed by all of the other members to represent the interests of the general public.

4. Appointment terms: Members are appointed for 4–year terms and incumbent members may be reappointed for 2–year terms.

5. The Review Committee's work is completed during public meetings. The Review Committee normally meets face-to-face two times per year, and each meeting is normally two or three days. The Review Committee may also hold one or more public teleconferences of several hours duration. The next face-to-face Review Committee meeting is tentatively scheduled in Juneau, AK, on May 30–31, 2005.

6. Compensation: Review Committee members are compensated for their participation in Review Committee meetings.

7. Reimbursement: Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings.

8. Additional information regarding the Review Committee, including the Review Committee's charter, meeting protocol, and dispute resolution procedures, is available on the National NAGPRA program Website, *www.cr.nps.gov/nagpra* (click ''Review Committee'' in the menu on the right).

Definitions of Some Terms Used in this Notice

1. Indian tribe: Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and Service's provided by the United States to Indians because of their status as Indians [43 CFR 10.2 (b)(2)].

2. Native Hawaiian organization: Any organization that:

a. serves and represents the interests of Native Hawaiians,

b. has as a primary and stated purpose the provision of Service's to Native Hawaiians, and

c. has expertise in Native Hawaiian affairs, and

d. must include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei. [43 CFR 10.2 (b)(3)].

3. Traditional Native American religious leader: A person who is recognized by members of an Indian tribe or Native Hawaiian organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe's or organization's cultural, ceremonial, or religious practices [43 CFR 10.2 (d)(3)].

Dated: December 19, 2006.

C. Timothy McKeown,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E6–1292 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Assessment of Suitability and Non-Suitability for Further Study of Lands Within Cape Cod National Seashore for Consideration as Wilderness Areas

SUMMARY: Pursuant to Civil Action No. 03–04 (RMC), *The Wilderness Society* v. *Gale Norton,* January 10, 2005, and in accordance with National Park Service (NPS) Management Policies 2001 section 6.2.1, the NPS has completed a Wilderness Suitability Assessment to determine if lands within Cape Cod National Seashore meet criteria indicating suitability for designation as wilderness.

The Cape Cod National Seashore assessment found that the lands referenced within the park's General Management Plan as Natural Zones: (1) Are predominantly roadless and undeveloped; (2) are greater than 5,000 acres in size or of sufficient size as to make practicable their preservation and use in an unimpaired condition; and (3) meet the wilderness character criteria listed in section 2(c) of the Wilderness Act, and NPS Management Policies (2001).

The assessment also found that the remaining areas of Cape Cod National Seashore; (1) Are not predominantly roadless and undeveloped; (2) are not greater than 5,000 acres in size or of sufficient size as to make practicable their preservation and use in an unimpaired condition; and (3) do not meet the wilderness character criteria listed in the Wilderness Act and NPS Management Policies (2001).

Based on these findings, the NPS has concluded that the Natural Zones within Cape Cod National Seashore warrant further study for possible inclusion in wilderness.

ADDRESSES: A copy of the Wilderness Suitability Assessment can be obtained by writing to:

Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

FOR FURTHER INFORMATION CONTACT: Requests for further information on this Determination should be directed to: Superintendent, Cape Cod National

Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

SUPPLEMENTARY INFORMATION: The assessment standards outlined in NPS Management Policies (2001) to determine if a roadless, undeveloped area is suitable for preservation as wilderness are that it is over 5,000 acres in size or of sufficient size to make practicable its preservation and use in an unimpaired condition, and meets five wilderness character criteria: (1) The earth and its community of life are untrammeled by humans, where humans are visitors and do not remain; (2) the area is undeveloped and retains its primeval character and influence, without permanent improvements or human habitation; (3) the area generally appears to have been affected primarily by the forces of nature, with the imprint of humans' work substantially unnoticeable; (4) the area is protected and managed so as to preserve its natural conditions, and (5) the area offers outstanding opportunities for solitude or a primitive and unconfined type of recreation.

The requirement of the NPS to conduct the Wilderness Suitability Assessment for Cape Cod National Seashore was announced and discussed with the Cape Cod Advisory Committee members, the public, and local media representatives at meetings on June 20, September 26, and December 12, 2005.

Dated: January 6, 2006.

Steve P. Martin,

Deputy Director.

[FR Doc. 06–909 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–GB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Assessment of Suitability and Non-Suitability for Further Study of Lands Within Redwood National Park for Consideration as Wilderness Areas

SUMMARY: Pursuant to Civil Action No. 03–04 (RMC), *The Wilderness Society* v. *Gale Norton*, January 10, 2005, and in accordance with National Park Service (NPS) Management Policies 2001 section 6.2.1, the NPS has completed a Wilderness Suitability Assessment to determine if lands within Redwood National Park meet criteria indicating suitability for preservation as wilderness.

The Redwood National Park staff reviewed management related documents that discussed potential wilderness, reviewed existing resource conditions, and weighed this information against Primary Suitability Criteria, section 6.2.1.1, of Management Policies 2001.

Since the expansion of Redwood National Park in 1978, the park has undertaken an intense watershed rehabilitation program with a focus on removing roads. Since park expansion in 1978, about 219 miles of road have been removed and another 123 miles are proposed for removal within the Redwood Creek portion of the park. The 1999 Final General Management/General Plan and FEIS for Redwood National and State Parks states that until watershed restoration activities are completed that no wilderness area will be proposed. The 1979 General Management Plan concluded that a wilderness recommendation would be premature until rehabilitation efforts are completed because of the continuing need for large construction vehicles and the maintenance and heavy use of roads, activities inconsistent with wilderness designation.

Based on these findings, the NPS has concluded that the lands within Redwood National Park do not warrant further study for wilderness evaluation at this time. However, following successful completion of watershed restoration activities in 12–15 years, or during the next General Management Plan effort, reconsideration of wilderness suitability for certain tracts of land within Redwood Creek could be warranted.

ADDRESSES: A copy of the Wilderness Suitability Assessment can be obtained by writing to: Superintendent, Redwood National Park, 1111 Second Street, Crescent City, CA 95531.

FOR FURTHER INFORMATION CONTACT: Requests for further information on this Determination should be directed to: Superintendent, Redwood National Park, 1111 Second Street, Crescent City, CA 95531.

SUPPLEMENTARY INFORMATION: The assessment standards outlined in NPS Management Policies (2001) to determine if a roadless, undeveloped area is suitable for preservation as wilderness are that it is over 5000 acres in size or of sufficient size to make practicable its preservation and use in an unimpaired condition, and meets five wilderness character criteria: (1) The earth and its community of life are untrammeled by humans, where humans are visitors and do not remain; (2) the area is undeveloped and retains its primeval character and influence, without permanent improvements or human habitation; (3) the area generally appears to have been affected primarily by the forces fo nature, with the imprint of humans' work substantially unnoticeable; (4) the area is protected and managed so as to preserve its natural conditions; and (5) the area offers outstanding opportunities for solitude or a primitive and unconfined type of recreation.

Public notices announcing the park's intention to conduct this suitability assessment were placed in the Times Standard Newspaper in Humboldt County on December 7, 8 and 9, 2005, and in the Del Norte Triplicate, in Del Norte County on December 13, 14, and 15, 2005.

Dated: January 6, 2006.

Steve P. Martin,

Deputy Director.

[FR Doc. 06–908 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–GB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from an unknown location in Wisconsin.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota;

Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown site in Wisconsin (UPMı L–606–0605), by Dr. William C. Poole. At an unknown date, probably between 1830 and 1839, Dr. Poole sent the remains to Dr. Samuel George Morton, President of the Academy of Natural Sciences in Philadelphia as a contribution to his collection of human crania. No known individual was identified. No associated funerary objects are present.

From about 1830, the Academy of Natural Sciences in Philadelphia provided storage space for much of Dr. Morton's collection, including the human remains, until his death in 1852. In 1853, the collection was purchased from Dr. Morton's estate and formally presented to the Academy of Natural Sciences in Philadelphia. In 1966, Dr. Morton's collection, including the human remains, were loaned to the University of Pennsylvania Museum of Archaeology and Anthropology until 1997, when the collection was formally gifted to the museum.

The human remains have been identified as Native American based on the specific cultural and geographic attribution in the museum records. Collector's records, museum documentation, and published sources (Morton 1839, 1840, and 1849; Meigs 1857) identify the human remains as those of a female ''Dacota'' Sioux warrior of Wisconsin and date them to the Historic period, probably to the early 19th century. Scholarly publications indicate that Wisconsin was an area settled by the Dakota groups during the early 19th century. The Dakota are the eastern group of the Sioux, and comprised of the Sisseton, the Wahpeton, and the Santee, who in turn are composed of the Wahpekute and Mdewakanton. Dakota descendants are members of the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota.

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum of Archaeology and Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Richard M. Leventhal, The Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, before March 3, 2006. Repatriation of the human remains to the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: January 11, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–1291 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Denver Museum of Nature & Science, Denver, CO, which meets the definitions of ''sacred object'' and ''object of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service in not responsible for the determinations in this notice.

The cultural item is a beaded button blanket called ''Killerwhale Jumping Over the Reef Robe'' (A.C. 11517). The garment in Tlingit language and usage is called a ''robe,'' and translated as a ''button blanket'' in English, and the two terms are used interchangeably to describe the cultural item.

According to notes, an unknown woman at an unknown date made the robe in honor of the supernatural event

depicted, for Gus'kooskaan, who had it until his death around 1880. From Gus'kooskaan, the robe was passed to Gusht'eiheen, who had it at his death around 1908. The robe was then passed to Daanaawu, Archie Bell, and then finally to Xaalgen, Annie Jacobs in 1942. In 1974, Annie Jacobs and Mark Jacobs, Sr., sold the robe to Michael R. Johnson, a collector and art dealer in Seattle, WA. In 1975, Mrs. Mary W. A. Crane purchased the robe from Mr. Johnson and gifted it to the Denver Museum of Natural History (now the Denver Museum of Nature & Science) to enhance the Crane American Indian Collection's Northwest Coast materials. The museum accessioned the robe into the collection later that same year.

The male or female one-piece rectangular garment is worn as a robe draped around the shoulders over other clothing, with the continuous border at the top, the design centered on the back, and the bordered opening falling down the wearer's chest to the legs. The robe is made of black woolen cloth with a broad red woolen cloth top and side borders outlined on the inside with three rows of sewn-on pearl buttons. The button-and-bead design on the robe's dark woolen cloth depicts the Killerwhale clan ancestor jumping over a reef in Chatham Strait near the seafront of Angoon, AK. It is centered with a large outlined design of a dorsal-finned whale, in-filled with ribcage and crouched human figures, which curves over a humanoid face and floral motifs. The design is worked in white seed bead lane embroidery, a few yellow and purple bead outlines, large and small pearl buttons along the spine, and appliqued red cloth features outlined in beads.

Edward K. Thomas, President of the Central Council Tlingit & Haida Indian Tribes of Alaska, provided detailed written and photographic documentation of the robe's history as early as 1910 and its significance and ownership by the Dakl'aweidi clan. Mr. Thomas explained the clan's right to a particular killerwhale crest and clarified several crucial matters of crest ownership and use, and the function of designated caretakers of clan property. Ms. Lydia George, a representative of the Dakl'aweidi clan, of Killerwhale House, Angoon, AK, spoke of the story associated with the robe during a consultation and repatriation at the museum in June 1997.

The cultural item is both a sacred object needed by traditional Native Alaskan leaders and an object of cultural patrimony. In depicting the clan crest, the Keet or Killerwhale, the robe embodies the Keet Yelk or Spirit of the Killerwhale, in particular, the Killerwhale Jumping Over the Reef. It bonds clan members in a kinship and spiritual relationship to Killerwhale, particularly to this Killerwhale event, and to their ancestors who paid for the crest. The object is required for the ceremonial rites conducted to renew and ensure the spiritual harmony of the Tlingit people. The robe is not owned by a single individual, instead there are designated caretakers of the robe, and it belongs to the clan as a whole, and therefore it could not have been alienated by a single individual.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the button blanket is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Denver Museum of Nature & Science have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the button blanket has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the sacred object/object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object/object of cultural patrimony should contact Dr. Steven Holen, Head of the Anthropology Department, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–8261, before March 3, 2006. Repatriation of the sacred object/object of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes on behalf of the Dakl'aweidi Clan of the Killerwhale House, Angoon, AK, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: December 30, 2005

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–1275 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items that are in the possession of the Denver Museum of Nature & Science, Denver, CO, which meets the definitions of ''sacred object'' and ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The ten cultural items are two Dilzini Gaan kilts, one of colored hide with tinklers and bells and the other of colored, beaded canvas (AC.4422 and A.C.8087F); two feathered caps, one made by Abner Kahn of hide with attached eagle and turkey feathers and the other made of buckskin with red cloth inlay, brass studs, and beads (AC.7620 and AC.10177); one man's cap of painted hide, beaded with shell and feather attachments (AC.4777); one Dilzini Gaan mask of black cloth surmounted by a wooden crown of eight fingers and a central rayed cross, painted white with red and blue designs (AC.7592); one pair of Dilzini Gaan boots of colored hide (AC.8087D and AC.8087E); one Dilzini Gaan leg band with tinklers and bells (AC.8087J); and one Dilzini Gaan concha belt of commerial leather with round silver conchas and attached beaded bag with tinklers (AC.8087G).

Museum records show the items were purchased by Mary W.A. Crane and Frances V. Crane of The Crane Foundation from The Fred Harvey Company, Rex Arrowsmith, House of Six Directions, Forestdale Trading Post, and Taos Bookstore in New Mexico and Arizona from 1959 to 1966. In 1968, the cultural items were donated by The Crane Foundation to the Denver Museum of Natural History (now Denver Museum of Nature & Science). The cultural items are cataloged as North American Indian ethnographic

objects of various Western Apache cultures.

Museum accession, catalogue, and computer records, published sources, and consultation with The Western Apache NAGPRA Working Group indicate that the ten cultural items described above are from the Western Apache. The Dilzini Gaan objects have been illustrated and/or described in scholarly studies as styles used in traditional girls initiation ceremony by Gaan spirit impersonators. The masks, attire, and equipment are held in high regard in Western Apache society and are specifically needed for ongoing practices of traditional Apahce spiritual beliefs. Western Apache representatives identified each of the items with ongoing religious practice and their testimony was incorporated into museum catalogue identification and descriptions. The cultural items belong to the Western Apache as a group. There are no museum records that indicate the collectors from whom the objects were obtained had received voluntary consent for alienation from individuals or a group with authority as keepers of sacred materials. Therefore, the cultural items have been identified as fitting the definition of sacred objects and objects of cultural patrimony.

The Western Apache NAGPRA Working Group represents the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(3)(C) the ten cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001(3)(D), the ten cultural items have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the ten sacred objects/objects of cultural patrimony and The Western Apache NAGPRA Working Group, as representatives of the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the ten sacred objects/objects of cultural patrimony should contact Dr. Steven Holen, Head of the Anthropology Department, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–8261, before March 3, 2006. Repatriation of the ten sacred objects/objects of cultural patrimony to the Western Apache NAGPRA Working Group, representing the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona that this notice has been published.

Dated: December 30, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–1279 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Fort Collins Museum, Fort Collins, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Fort Collins Museum, Fort Collins, CO. The human remains were removed from unknown sites, but most likely from Larimer and other Colorado counties.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Fort Collins Museum professional staff in consultation with physical and forensic anthropologists and representatives of the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.

At an unknown time, human remains representing a minimum of 13 individuals were donated to the Fort Collins Museum, Fort Collins, CO. According to museum records and the history of the institution's collections, the human remains were most likely removed from Larimer and/or surrounding counties. While specific provenience for the human remains is unknown, certain osteological evidence and dental characteristics suggest that the remains are of probable Native American ancestry and are believed to date to before 1880. No known individuals were identified. No associated funerary objects are present.

Traditional territorial evidence of Arapaho and Cheyenne occupation of Larimer County is documented on numerous maps, including ''Indian Land Areas Judicially Established 1978.'' The map, ''Early Indian Tribes, Culture Areas, and Linguistic Stocks,'' establishes the presence of the Arapaho and Ute tribes in the area during the time of contact. The Colorado Office of Archaeology and Historic Preservation map, ''Estimated Tribal Territories in Colorado During the Late Nineteenth Century,'' shows the presence of the Apache, Arapaho, Cheyenne, Comanche, and Kiowa tribes in all of eastern Colorado, including Larimer

County. The Southern Ute Indian Tribe map, ''Original Ute Domain,'' includes Larimer County as a part of the original domain of the Utes. Through both oral tradition and written records, the Lakota were known to have been in Larimer County and other northern Colorado counties by at least the early 1800s. Furthermore, during consultations with official representatives of the culturally affiliated tribes, folklore, oral tradition, and geographical and historical evidence provided indicates that Larimer County is part of their traditional territory.

In addition to musuem records, osteological evidence, and dental characteristics, oral traditions, archeological context, ethnographic research, and ethno-historic documents support cultural affiliation between the human remains and descendants of the Apache, Arapaho, Cheyenne, Comanche, Kiowa, Lakota, and Ute tribes as members of the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe, South Dakota; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.

In April 2002, representatives of several of the above-mentioned Indian tribes were consulted regarding the cultural affiliation and disposition of the human remains in this notice, as well as the human remains of four individuals described in a Notice of Inventory Completion published in the **Federal Register** on September 12, 2002 (FR Doc. 02–23127, pages 57838–57839). Following the April 2002 consultation, a joint claim of cultural affiliation was authorized by nine tribes with two other tribes subsequently adding their signatures. The joint claim of cultural affiliation identified the Cheyenne-Arapaho Tribes of Oklahoma as the lead Indian tribe in the repatriation of the four other individuals. Reburying of the individuals occurred in June 2003. Since that time, further consultations with the above-mentioned tribes have resulted in verbal agreement to support the joint claim of cultural affiliation and the request that the Cheyenne-Arapaho Tribes of Oklahoma take the lead in repatriating and reburying the 13 individuals described in this notice.

Officials at the Fort Collins Museum have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of 13 individuals of Native American ancestry. Officials of the Fort Collins Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Brenda Martin, NAGPRA Coordinator, Fort Collins Museum, 200 Mathews Street, Fort Collins, CO 80524, (970) 416–2720, before March 3, 2006. Repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma may proceed after that date if no additional claimants come forward.

Fort Collins Museum is responsible for notifying the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah that this notice has been published.

Dated: December 19, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–1268 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Fort Collins Museum, Fort Collins, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Fort Collins Museum, Fort Collins, CO. The human remains were most likely removed from Death Valley, Inyo County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Fort Collins Museum professional staff in consultation with physical and forensic anthropologists and representatives of the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Independence Indian Community of

Paiute Indians of the Fort Independence Reservation, California; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California.

On March 25, 1953, human remains representing a minimum of one individual were donated to the Fort Collins Museum, by Carl W. Swanson of Greeley, CO. Although the specific provenience of the human remains is unknown, according to museum records, Mr. Swanson stated at the time of his donation, that the skull was a ''Skull from Death Valley, California.'' In April 1999, Dr. Ann Magennis, Professor of Anthropology at Colorado State University, documented that the skull and the cranial morphology indicate that the human remains are most probably of Native American descent. No known individual was identified. No associated funerary objects are present.

Death Valley, CA, is within the traditional territory of the Paiute and Shoshone people. Furthermore, supporting osteological evidence, oral traditions, archeological and ethnographic research, and ethnohistoric documents support a cultural affiliation of the human remains to the Paiute and Shoshone tribes. Descendants of the Paiute and Shoshone from the Death Valley area are members of the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California.

Officials of the Fort Collins Museum have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of one individual of probable Native American ancestry. Officials of the Fort Collins Museum also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Brenda Martin, NAGPRA Coordinator, Fort Collins Museum, 200 Mathews Street, Fort Collins, CO 80524, telephone (970) 416–2720, before March 3, 2006. Repatriation of the human remain to the Death Valley Timbi-Sha Shoshone Band of California may proceed after that date if no additional claimants come forward. The Death Valley Timbi-Sha Shoshone Band of California is acting as the representative for the other culturally affiliated tribes in matters of repatriation of human remains with a relationship to Death Valley, Inyo County, CA.

The Fort Collins Museum is responsible for notifying the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Yomba Shoshone Tribe of the Yomba Reservation, Nevada that this notice has been published.

Dated: December 19, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–1270 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: UCLA, Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the UCLA, Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA. The human remains and associated funerary objects were removed from a site on the north shore of Buena Vista Lake, Kern County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by UCLA Fowler Museum of Cultural History professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe), and the Tinoqui-Chalola Council of Kitanemic and Yowlumne Tejon Indians, a non-federally recognized Indian group.

In 1940 or 1941, human remains representing a minimum of three individuals were removed from the Cole's Levee site in Kern County, CA, by Ralph Beals and a University of California, Los Angeles field class to salvage a cremation mortuary area discovered in oil fields. The collection was accessioned by the University of California, Los Angeles in 1953. No known individuals were identified. The 90 associated funerary objects are 1 serpentine bead, 3 projectile points, 3 olivella beads, 73 stone fragments, 3 bags of burned animal bone, 3 bags of shell fragments, and 4 utilized flakes.

The artifacts are consistent with others documented as associated with the indigenous inhabitants of the area. The beads and projectile points associated with the burials date between Middle Period phase 5 and Late Period

phase 1 (A.D. 900–1500). Lake Buena Vista is located within the traditional territory of the Yokut tribe. In addition, cremation was a burial custom in the Yokut ethnohistorical period. According to archeologists, the Yokut have occupied the territory around Tulare Lake and Buena Vista Lake for as long as two millennia.

A representative of the Tinoqui-Chalola Council of Kitanemic and Yowlumne Tejon Indians (a non-federally recognized Indian group), identified the area as being within the traditional territory of the Yowlumne Band of Yokut Indians. Furthermore, tribal representatives from Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe) identified this site as being within the traditional territory of the Yokut people. Descendants of the Yokut are members of the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe); Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and two non-federally recognized Indian groups, called the Wuchumni Tribe of Yokut Indians and Yowlumne Band of Indians.

Officials of the UCLA Fowler Museum of Cultural History have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the UCLA Fowler Museum of Cultural History also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 90 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the UCLA Fowler Museum of Cultural History have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe); Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and two non-federally recognized Indian groups, called the Wuchumni Tribe of Yokut Indians and Yowlumne Band of Indians. The University of California, Los Angeles has received a claim from the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe) for the human remains and associated funerary objects from the Cole's Levee site.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Diana Wilson, UCLA NAGPRA Coordinator, Office of the Vice Chancellor, Research, University of California, Los Angeles, Box 951405, Los Angeles, CA 90095–1405, telephone (310) 825–1864, before March 3, 2006. Repatriation of the human remains and associated funerary objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe) may proceed after that date if no additional claimants come forward.

UCLA Fowler Museum of Cultural History is responsible for notifying the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe); Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; Wuchumni Tribe of Yokut Indians (a non-federally recognized Indian group); and Yowlumne Band of Indians (a non-federally recognized Indian group) that this notice has been published.

Dated: January 4, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–1271 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: San Francisco State University, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of San Francisco State University, San Francisco, CA. The human remains were removed from an unknown site in Stanislaus County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by San Francisco State University professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe).

On an unknown date, human remains representing a minimum of one individual were removed from an unknown site (CA-Sta-UNK) in Stanislaus County, CA. The human remains were encased in a soil matrix inside a box marked ''Sta-?'' indicating removal from a Native American archeological site in Stanislaus County. In addition, the morphology of the malar, or cheekbone area, indicates Native American ancestry. No known individual was identified. No associated funerary objects are present.

Based on ethnography and consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California, it has been determined that Stanislaus County is within the historically documented territory of the Northern Valley Yokut and Central Sierra Miwok tribes, represented by the present-day Santa Rosa Indian Community of the Santa Rosa Rancheria, California and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Officials of San Francisco State University have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of San Francisco State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California. The Santa Rosa Indian Community of the Santa Rosa Rancheria, California has claimed the human remains from site Ca-Sta-UNK.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Jeff Fentress, NAGPRA Coordinator, Department of

Anthropology, San Francisco State University, 1600 Holloway Ave., San Francisco, CA 95132, telephone (415) 338–3075, before March 3, 2006. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may proceed after that date if no additional claimants come forward.

San Francisco State University is responsible for informing the Santa Rosa Indian Community of the Santa Rosa Rancheria, California and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: January 9, 2006.

Sherry Hutt,

Manager, National NAGPRA Progam.

[FR Doc. E6–1274 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Colorado Museum, Boulder, CO. The human remains and associated funerary objects were removed from Adams, Arapahoe, Baca, Boulder, Fremont, Huerfano, Larimer, Logan, Morgan, Saguache, Sedgwick, and Yuma Counties, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by University of Colorado Museum professional staff in consultation with representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Comanche Nation, Oklahoma; and Crow Tribe, Montana. In addition, professional staff from the museum were participant-observers in consultations involving the Colorado Historical Society and representatives from the Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

In 1963, human remains representing a minimum of one individual were removed from the Michaud site A (5AH2) by William G. Buckles of the Department of Anthropology, University of Colorado, Boulder as part of an archeological salvage operation. The site is located on private land adjacent to Bijou Creek, southwest of the town of Byers, Arapahoe County, CO. The human remains were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individual was identified. The 11 associated funerary objects are 5 subrectangular handstones, 2 unshaped hammerstones, 2 chipped stone choppers, 1 shallow-basin sandstone milling stone, and 1 animal bone.

A single radiocarbon date of 1,800100 years B.P. (2 B.C.-A.D. 532 calibrated) was obtained from the burial material from the Michaud site A in 1966. This date, as well as the styles of projectile points, cord-marked pottery sherds, and other chipped stone and groundstone in nearby occupation debris, support a determination of Native American origin and an occupational date range of A.D. 150–1150, the Early Ceramic period of the Late Prehistoric stage, a period associated with Plains Woodland cultures of this region.

In 1966, human remains representing a minimum of one individual were removed from the Crenshaw site (5AH4) by John J. Wood, Department of Anthropology, University of Colorado, Boulder. The site is on a tributary of West Bijou Creek, south of the town of Strausburg, Arapahoe County, CO. Museum records indicate that the site was excavated with the permission of the private landowner as part of an archeological salvage operation. The collections were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individual was identified. The five associated funerary objects are one piece of burned sandstone, one piece of quartzite, one piece of chalcedony, one unidentified stone, and one charcoal sample from the burial pit.

Based on the archeological materials found in the strata above the burial and the manner of burial, the burial at the Crenshaw site is determined to be Native American. The extreme wear on the teeth of this individual suggests their use as a tool, which is characteristic of prehistoric Native American peoples. The burial most likely dates to sometime in the Late Archaic or Early Ceramic period (1000 B.C.-A.D. 1150) based on the artifacts present. During these time periods, the area was inhabited by Plains Woodland cultures.

In 1966, human remains representing a minimum of one individual were removed from the Witkin Burial site (5AH6) near Byers, Arapahoe County, CO, by the county coroner after discovery during residential construction. The human remains were transferred to the Department of Anthropology, University of Colorado, Boulder. No known individual was identified. No associated funerary objects are present. Two lithic bifaces, a bone awl, and a bone scraper were found with the burial when it was discovered, but these items do not appear to have been with the human remains when they were transferred from the Department of Anthropology to the University of Colorado Museum in 1991 and, apparently were lost sometime between 1966 and 1991.

A single radiocarbon date of 3,19080 years B.P. (1627–1264 B.C. calibrated) was obtained from the Witkin burial in 1966, indicating that the human remains are Native American in origin. The radiocarbon date is consistent with a very late Middle Archaic chronological placement. Given the clear evidence of Late Archaic and Early Ceramic period material culture in other areas of the site, the burial is more securely dated to the Late Archaic (1000 B.C.-A.D. 150).

In 1963, human remains of a minimum of 11 individuals were removed from the Hazeltine Heights

burial site (5AM3) by Department of Anthropology, University of Colorado, Boulder staff William G. Buckles and George H. Ewing, as part of a salvage operation arranged with the permission of the landowner. The Hazeltine Heights site is on private property close to the South Platte River between Denver and Brighton, Adams County, CO. The human remains were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individuals were identified. The 20 associated funerary objects are 1 necklace of olivella shell beads, 5 individual olivella shell beads, 1 projectile point, 1 stone pendant, 2 groups of beads manufactured from both small mammal and bird bone (probably necklaces), 9 Unio shell pendants, and 1 sample of green-stained soil found close to one of the burials.

Based on stratigraphy, the burials are approximately contemporaneous. A single radiocarbon date of 1,305100 years B.P. (A.D. 566–971 calibrated) was obtained from one of the human bones in 1963, indicating that the human remains are Native American in origin. All of the Hazeltine Heights site burials date to the Early Ceramic period (A.D. 150–1150) of the Late Prehistoric stage, the period during which Plains Woodland cultures occupied this region.

In 1964, human remains representing a minimum of one individual were removed from the Byers Burial site (5AM4) by John J. Wood, Department of Anthropology, University of Colorado, Boulder. The site is between Byers and Hoyt, Arapahoe County, CO, on the west side of Bijou Creek. Surface materials reported by local residents included cord-impressed pottery and projectile points, but chipped stone debitage was the only surface debris observed when Dr. Wood excavated the burial. The human remains and other materials were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individual was identified. The one associated funerary object is a sample of burned sand and sandstone from the burial pit.

Material culture at the Byers Burial site identifies the occupants as Native American and dates the occupation to the Early Ceramic period (A.D. 150–1150) of the Late Prehistoric stage, the period during which Plains Woodland cultures occupied this region.

In 1964, human remains representing a minimum of one individual were removed from site 5BA1 by Joe Ben Wheat as part of a University of Colorado Museum archeological survey of Baca County, CO. The burial was within a larger, possibly multi-component site located on several terraces of Bear Creek. No known individual was identified. No associated funerary objects are present.

Other artifacts from the site identify the occupants as Native American and date the occupation to sometime between the Late Archaic and Early Ceramic periods (1000 B.C.-A.D. 1150). The Early Ceramic is the period during which Plains Woodland cultures occupied this region.

In 1961, human remains representing a minimum of one individual were removed from the Paley site (5BL56) by William Buckles, Department of Anthropology, University of Colorado, Boulder. The site is in Cow Creek Valley close to the Meeker Park Lodge, Boulder County, CO. After securing permission from the private landowner, Dr. Buckles excavated the burial. The human remains were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individual was identified. The 16 associated funerary objects are 3 charcoal samples, 4 crystalline stones, 4 pieces of chipped stone, 1 biface, 1 group of shell bead fragments, 1 mano, 1 milling stone, and 1 antler fragment.

The individual was buried in a tightly flexed position. Based on the associated funerary objects and the burial style, the human remains are determined to be Native American and date to either the Late Archaic or Early Ceramic period of the Late Prehistoric stage (1000 B.C.-A.D. 1150). The Early Ceramic period is the period during which the Plains Woodland cultures occupied this region.

In 1964, human remains representing a minimum of two individuals were removed from the Peavy rock shelter (5LO1), Logan County, CO, by John J. Wood, Department of Anthropology, University of Colorado, Boulder. The rock shelter is located on the south side of an isolated butte in the extreme northwestern corner of Logan County. The human remains were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individuals were identified. The six associated funerary objects are two lots of animal bone, two charcoal samples, one chipped stone flake tool, and one lot of chipped stone debris.

Based on the associated material culture and the site date, the human remains are determined to be Native American. One burial at the rock shelter is stratigraphically associated with the main occupation of the shelter, which dates to approximately 800 years ago based on a radiocarbon date of 810125 B.P. (A.D. 996–1405 calibrated) and associated cord-marked sherds. The second burial may slightly postdate this occupation, based on the stratigraphic placement of the burial pit, but is still within the Middle Ceramic period (A.D. 1150–1540).

On an unknown date, human remains representing a minimum of two individuals were removed from site 5LR95, now within Horsetooth Reservoir, Larimer County, CO, by Edward Andrews. Mr. Andrews donated the remains to the Department of Anthropology, University of Colorado, Boulder at an unknown date prior to 1991. The human remains were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics of the human remains are consistent with identification of these burials as Native American. The burials most likely date to sometime between the Late Archaic and Protohistoric periods (1000 B.C.-A.D. 1860), based on the dates of nearby habitation sites.

In 1964, human remains representing a minimum of three individuals were removed from the Hutcheson Burial site (5LR97) by David Breternitz and John J. Wood, Department of Anthropology, University of Colorado, Boulder with the landowner's permission. The Hutcheson burial site is on a terrace east of Buckhorn Creek, northwest of Loveland, Larimer County, CO. The human remains and other materials were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individuals were identified. The five associated funerary objects are two lots of bone beads, totaling almost one hundred beads, manufactured from bird bone humeri and small mammal bones; one lot of over forty bone beads; one small unmodified stone; and the midsection of one gray chert projectile point.

At least two of the individuals were buried in a flexed position. A radiocarbon date of 1,805105 B.P. (A.D. 1–443 calibrated) was obtained in 1965 from one of the burials, identifying the individuals as Native American. Based on this date and the manner of burial, the site is chronologically placed in the Early Ceramic period (A.D. 150–1150) of the Late Prehistoric stage, the period during which Plains Woodland cultures occupied this region.

In 1967, human remains representing a minimum of five individuals were removed from the Gahagan-Lipe site

(5MR378), Morgan County, CO, by David Breternitz, Department of Anthropology, University of Colorado, Boulder, as part of an archeological salvage operation during residential construction activities. The human remains and other materials from the site were transferred from the Department of Anthropology to the University of Colorado Museum in 1991. No known individuals were identified. The four associated funerary objects are one fragment of a shell pendant, one deer ankle bone, one chipped stone graver, and one bird femur. An atlatl weight appears to have been associated with one of the burials but was lost before 1991.

Based on the associated funerary objects and the burial style, the human remains are determined to be Native American. Burial practices exhibited by the Gahagan-Lipe burials are similar to patterns common in other Plains Woodland sites inhabited during the Early Ceramic period (A.D. 150–1150) in this part of Colorado.

In 1963, human remains representing a minimum of one individual were removed from a site on the Kenneth Walker farm in Morgan County, CO, by Joe Ben Wheat, University of Colorado Museum, and David Breternitz, Department of Anthropology, University of Colorado, Boulder. The site is approximately 10 miles south of Fort Morgan, Morgan County, CO. No known individual was identified. The four associated funerary objects are projectile points and point fragments. Field reports note several sherds, no longer present in the collections.

The individual was buried in a flexed position. Based on the recorded presence of pottery at the site, the styles of projectile points, and the manner of burial, the human remains are Native American and most likely date to the Early Ceramic period (A.D. 150–1150) of the Late Prehistoric stage, the period during which Plains Woodland cultures occupied this region.

In 1948, human remains representing a minimum of one individual were removed from a site on the Sidel Ranch near Sedgwick, Sedgwick County, CO, by unknown individuals. The human remains were examined by the Sedgwick County coroner and then reported to the University of Colorado Museum. The human remains were donated to the museum in 1948. No known individual was identified. No associated funerary objects are present.

The individual was buried in a flexed position. Osteological characteristics and manner of burial indicate that the human remains from Sidel Ranch are prehistoric Native American. Based on the location and manner of burial, the human remains are dated to between the Late Archaic (1000 B.C.-A.D. 150) and the Protohistoric (A.D. 1540–1860) periods.

In 1954, human remains representing a minimum of one individual were removed from a site on the Soucie Ranch, west of Longmont, Boulder County, CO, by Joe Ben Wheat, University of Colorado Museum, and were donated to the museum by Mr. Soucie the same year. No known individual was identified. No associated funerary objects are present.

The body was in a flexed position, and limestone rocks covered the skull. Based on osteological characteristics and style of burial, the human remains are Native American. The human remains date to between the Late Archaic (1000 B.C.-A.D. 150) and the Protohistoric (A.D. 1540–1860) periods.

In 1951, human remains representing a minimum of one individual were removed from an unknown area near the old toll station in Boulder Canyon, Boulder County, CO. The human remains were either transferred to the University of Colorado Museum by another University of Colorado department or anonymously donated prior to 1993. No known individual was identified. No associated funerary objects are present.

Based on dental characteristics and burial location in an unmarked grave far from historic settlements, the human remains are determined to be Native American. The human remains date to 1000 B.C.-A.D. 1860, based on the fact that most Native American burials in this area post-date the Late Archaic period (1000 B.C.-A.D. 150).

On an unknown date, human remains representing a minimum of three individuals were removed from unknown locations in Boulder County, CO, by unknown individuals. The limited museum records suggest that two individuals were removed from locations near Sugarloaf Road, west of Boulder, CO. In 1983, the human remains were donated to the University of Colorado Museum by an unknown individual. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics and burial in unmarked graves indicate that the human remains are of Native American origin. Dental wear, the poor preservation of some of the human remains, and the fact that the individuals were found in unmarked graves all indicate that the burial date to a time before A.D. 1860, and probably post-date the Late Archaic period (1000 B.C.-A.D. 150).

In about 1951, human remains representing a minimum of one individual were removed from an unknown location near the Upper St. Vrain River, Boulder County, CO, by Elmer Johnson. At an unknown date between 1951 and 1993, the human remains were either transferred to the University of Colorado Museum by another department or were anonymously donated to the museum. No known individual was identified. The one associated funerary object is an animal bone.

Osteological characteristics and burial in an unmarked grave indicate that the human remains are of Native American origin. Dental wear, the poor preservation of the human remains, and the fact that the individual was found in an unmarked grave indicate that the burial dates to a time before A.D. 1860, and most likely post-dates the Late Archaic period (1000 B.C.-A.D. 150).

At an unknown date, human remains representing a minimum of three individuals were removed from unknown locations in the Red Canyon-Copper Mountain region, Fremont County, CO, by Bert Roberts. Mr. Roberts donated the human remains to the University of Colorado Museum sometime probably prior to 1940. No known individuals were identified. No associated funerary objects are present.

Osteological characteristics and burial in an unmarked grave indicate that the human remains are of Native American origin. Dental wear, the poor preservation of the human remains, and the fact that the individuals were found in unmarked graves indicate that the burials date to a time before A.D. 1860, and most likely post-date the Late Archaic period (1000 B.C.-A.D. 150).

On an unknown date, human remains representing a minimum of one individual were removed from an unknown location in Huerfano County, CO, called ''Walsenburg Cave.'' The human remains were anonymously donated to the University of Colorado Museum about 1960. No known individual was identified. The three associated funerary objects are one blanket of leather and feathers and two flaked lithic tools.

Associated funerary objects and manner of burial indicate that the human remains are of Native American origin. It is likely that the burial dates to within the last 2,000 years based on the relatively good preservation of the leather and feather blanket.

On an unknown date, prior to 1916, human remains representing a minimum of one individual were removed from an unknown location near Berthoud, Larimer County, CO, by

F.A. Frazier. The human remains were found in association with a minimum of two other individuals, whose remains were not removed. Mr. Frazier donated the human remains to the University of Colorado Museum in 1916. No known individual was identified. No associated funerary objects are present.

The nature of the burial, dentition, and the fact that multiple burials were found close to one another all suggest that the burial is of a Native American individual and dates to between the Late Archaic (1000 B.C.-A.D. 150) and the Protohistoric (A.D. 1540–1860) periods.

In or about 1936, human remains representing a minimum of one individual were removed from an unknown location near Loveland, Larimer County, CO, by W.A. Rhinehart. The human remains were donated to the University of Colorado Museum by Nancy Byers in 1979. No known individual was identified. The three associated funerary objects are one bone bead bracelet and two shell disks.

Based on the fact that the burial was found in an unmarked grave with bone beads and shell disks, the human remains are determined to be Native American in origin. The burial most likely dates to the last 3,000 years based on artifacts and the fact that most Native American habitations in this region date to the Late Archaic or Late Prehistoric periods.

On an unknown date, human remains representing a minimum of two individuals were removed from an unknown location near Weldona, Morgan County, CO, by an unknown individual. On an unknown date prior to 1990, the remains were donated to the University of Colorado Museum by Mr. McPerry. No known individuals were identified. No associated funerary objects are present.

The limited information available for the Weldona burials suggests that the human remains came from unmarked graves and that no historic items were associated with the burials. This suggests that the individuals are Native American and that the burials pre-date A.D. 1860.

In 1954, human remains representing a minimum of one individual were removed from an unknown location in Saguache County, CO, by M.F. Boyd. The remains were donated to the museum the same year by Mrs. M.F. Boyd. No known individual was identified. No associated funerary objects are present.

Osteological characteristics and burial pattern suggest that the human remains are Native American in origin. Based on limited information on a mano and a metate reportedly found close to the burial in 1954, but not present in the collections, it appears that the burial dates to approximately the Late Prehistoric stage (A.D. 150–1540), the period during which Plains Woodland cultures occupied this region.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown location in Yuma County, CO, by Bud Knapp. Sometime prior to 1991, the human remains were donated to the University of Colorado Museum by Henry H. Hoskin of Burlington, CO. No known individual was identified. No associated funerary objects are present.

Based on limited museum records, it appears that the burial was found in an unmarked grave, suggesting that the human remains are Native American and probably date to a time prior to A.D. 1860.

Geographic, historic, and linguistic evidence suggest historical continuity between early occupations in eastern Colorado and a number of tribes currently residing outside Colorado. Archeological evidence suggests at least partial historical continuity in occupation of eastern Colorado from the Late Archaic through the Middle Ceramic period, and that there are non-specific continuities between occupations in eastern Colorado in the Middle Ceramic period and historically known tribes that reside outside of Colorado. Oral traditions and Native American expert opinion indicate that strong historical connections exist between these same tribes and occupations in eastern Colorado.

Geographical, historic, and linguistic evidence and references include a series of authoritative studies. The Indian Land Areas Judicially Established 1978 Map indicates the legal claim to lands in eastern Colorado based upon traditional use for the Ute, Cheyenne, and Arapaho. The Early Indian Tribes, Culture Areas, and Linguistic Stocks Map establishes the presence of the Ute throughout much of Colorado at the time of contact with Europeans. The Colorado Office of Archaeology and Historic Preservation map of Native American distribution in Colorado establishes the presence of the Ute, Lakota, Arapaho, Cheyenne, Comanche, Kiowa, Apache, and Pawnee in eastern and central Colorado in the nineteenth century. The Native Languages and Language Families of North America map in Handbook of North American Indians: Languages (vol. 17; Smithsonian Institution 1996) establishes the presence in the region at contact of Uto-Aztecan (Ute, Comanche), Algic (Arapaho, Nawathinehena), and Nadene (Jicarilla Apache) language families. Additionally, information in The Handbook of North American Indians: Plains (vol. 13; Smithsonian Institution 2001) and Colorado Prehistory (Arkansas River Basin and Platte River Basin; Colorado Council of Professional Archeologists, 1999) suggests occupation, use, and historical connections to this area by Sioux, Hidatsa, Arikara, and Mandan tribes. Moreover, geographic, historic, and linguistic references indicate considerable movement of tribal groups within and through the eastern Colorado region; that is, many tribes located outside the region in historic times are known to have moved through and occupied the region. Linguistic evidence of discontinuous distributions of Uto-Aztecan (Ute, Comanche), Algic (Arapaho, Mawathinehena), Kiowa-Tanoan, and Caddoan (Hidatsa, Pawnee) language families indicate that these movements occurred long before historic records. Anthropological resources suggest knowledge and use of the region, prior, during, and after movements by all of the named tribes.

Archeological evidence, summarized above, indicates that Native American habitation in eastern Colorado spanned the Late Archaic to Protohistoric periods (1000 B.C. to A.D. 1860). Archeological evidence suggests at least partial historical continuity from Late Archaic through the Plains Woodlands Early Ceramic periods (1000 B.C. to A.D. 1150) and, with less specific evidence, through the Middle Ceramic period (A.D. 1150 to 1540). Based on archeological evidence, it is clear that Plains Woodland cultures are ancestral to many modern tribes of the northern, central, and southern Great Plains, but specific affiliations between the various expressions of Plains Woodland culture and Middle Ceramic period culture and particular modern tribal groups are difficult to make.

Aceramic traditions persisted in the mountainous regions, extending eastward across eastern Colorado into the Great Plains until Protohistoric period. These aceramic traditions probably represent ancestral Ute and Jicarilla Apache tribes, as well as aceramic occupations of Plains Woodland and later, historically related, Plains tribes. It is not possible to make specific affiliations between these varied aceramic traditions and particular modern tribal groups.

Oral history obtained during consultations indicates the presence of historical continuity in Native American

occupation of eastern Colorado from the Late Archaic through Protohistoric periods. In consultations with potentially affiliated groups, the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and Ute Mountain Ute Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, all offered information from histories and oral traditions to place their tribes prehistorically along the Front Range and adjacent plains of eastern Colorado. The Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Nation, Oklahoma; Crow Tribe of Montana; Pawnee Nation of Oklahoma; Standing Rock Sioux Tribe of North & South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota offered traditional information that substantiated that they had occupied this area of the Plains prior to European settlement.

Officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of a minimum of 47 individuals of Native American ancestry. Officials of the University of Colorado Museum also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 79 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Nation, Oklahoma; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of New Mexico; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, Henderson Building, Campus Box 218, Boulder, CO 80309–0218, telephone (303) 492–6671, before March 3, 2006. Repatriation of the human remains and associated funerary objects to the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Nation, Oklahoma; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of New Mexico; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed after that date if no additional claimants come forward.

University of Colorado Museum is responsible for notifying the Arapahoe Tribe of the Wind River Reservation, Wyoming; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Nation, Oklahoma; Crow Tribe of Montana; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of New Mexico; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Dated: January 11, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–1273 Filed 1–31–06; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–302 and 731–TA–454 (Second Review)]

Fresh and Chilled Atlantic Salmon From Norway

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping and countervailing duty orders on fresh and chilled Atlantic salmon from Norway would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on February 2, 2005 (70 FR 5471) and determined on May 9, 2005 that it would conduct a full review (70 FR 29364, May 20, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 27, 2005 (70 FR 36947).[2] The hearing was held in Washington, DC, on October 20, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on January 27, 2006. The views of the Commission are contained in USITC Publication 3835 (January 2006), entitled Fresh and Chilled Atlantic Salmon from Norway: Investigation Nos. 701–TA–302 and 731–TA–454 (Second Review).

Issued: January 27, 2006.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Revisions to the schedule were published in the **Federal Register** on August 30, 2005 (70 FR 51365) and September 29, 2005 (70 FR 56930).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–1360 Filed 1–31–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Second Review)]

Fresh Garlic From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on fresh garlic from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 23, 2006. Comments on the adequacy of responses may be filed with the Commission by April 17, 2006. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On November 16, 1994, the Department of Commerce issued an antidumping duty order on imports of fresh garlic from China (59 FR 59209). Following five-year reviews by Commerce and the Commission, effective March 13, 2001, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China (66 FR 14544). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission found three separate Domestic Like Products consisting of fresh garlic, dehydrated garlic, and seed garlic corresponding with the broader scope of the original investigation. However, the Commission found that the domestic industries producing garlic for dehydration and seed garlic were neither materially injured nor threatened with material injury by reason of the subject imports from China. One Commissioner defined the Domestic Like Product differently in the original determination. In its full five-year review determination, the Commission defined the Domestic Like Product as all fresh garlic.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found three domestic industries consisting of the domestic producers of fresh garlic, the domestic producers of dehydrated garlic, and the domestic producers of seed garlic to coincide with the three Domestic Like Products. The Commission also found that crop tenders were not members of the Domestic Industry. One Commissioner defined the Domestic Industry differently in the original determination. In its full five-year review determination, the Commission defined the Domestic Industry as all producers of fresh garlic.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–146, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 17, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after May 2000.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during crop year 2005 (June 2004–May 2005) (report quantity data in pounds and value data in U.S. dollars, f.o.b. U.S. producing establishment(s)). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during crop year 2005 (June 2004–May 2005) (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. point of shipment, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. point of shipment, including

antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2005 (June 2004–May 2005) (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after May 2000, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) *(Optional)* A statement of whether you agree with the definitions of the Domestic Like Product as all fresh garlic and Domestic Industry as all producers of fresh garlic; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 24, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–807 Filed 1–31–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–355 and 731–TA–659 and 660 (Second Review)]

Grain-Oriented Silicon Electrical Steel from Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on grain-oriented silicon electrical steel from Italy and the antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on grain-oriented silicon electrical steel from Italy and the antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 23, 2006. Comments on the adequacy of responses may be filed with the Commission by April 17, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), 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:

Background.—On the dates listed below, the Department of Commerce (''Commerce'') issued countervailing duty and antidumping duty orders on the subject imports:

Order date	Product/Country	Inv. No.	FR cite
6/7/94	Grain-oriented silicon electrical steel/Italy	701–TA–355	59 FR 29414
6/10/94	Grain-oriented silicon electrical steel/Japan	731–TA–660	59 FR 29984
8/12/94	Grain-oriented silicon electrical steel/Italy	731–TA–659	59 FR 41431

Following five-year reviews by Commerce and the Commission, effective March 14, 2001, Commerce issued a continuation of the countervailing duty order on grain-oriented silicon electrical steel from Italy and the antidumping duty orders on grain-oriented silicon electrical steel from Italy and Japan (66 F.R. 14889). The Commission's determination in that review is currently on appeal. The Commission is now conducting second

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 06–5–147, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Italy and Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found that all types of grain-oriented silicon electrical steel comprise a single Domestic Like Product. In its full five-year review determinations, the Commission defined one Domestic Like Product, grain-oriented silicon electrical steel, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original and full five-year review determinations, the Commission found one Domestic Industry, producers of grain-oriented silicon electrical steel.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 17, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject

Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1999.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. point of shipment, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. point of shipment, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (*Optional*) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 24, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–806 Filed 1–31–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: COPS Extension Worksheet.

The Department of Justice (DOJ) Office of Community Oriented Policing

Services (COPS) 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 April 3, 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 Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

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 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 submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: COPS Extension Worksheet.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Law enforcement agencies that are recipients of COPS grants which are expiring within 90 days of the date of the form.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that approximately 2,700 respondents annually will complete the form within 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,350 total annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: January 26, 2006.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. E6–1316 Filed 1–31–06; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Pursuant to 28 CFR 507 notice is hereby given that on January 12, 2006, a proposed Consent Decree in the case *United States* v. *Adeline R. Bennett, MD Living Trust and Pitts Grandchildren's Trust,* Civil Action No. LACV 06–0238 DDP (AJWx) was lodged with the United States District Court for the Central District of California.

In this action, under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the ''Site'' or ''WDI Site.'').

The defendants in this action own a portion of the WDI Site, and the purpose of the settlement is to provide to the United States the access and institutional controls or environmental restriction covenants which are required to perform the remedial action at the Site. In addition, the defendants have agreed to sell their land parcels within a two year period of time after Decree entry, and pay a portion of the sale proceeds to the United States in reimbursements of its response costs. In return, the United States has provided covenants not to sue and contribution protection to each defendant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Adeline R. Bennett, MD Living Trust and Pitts Grandchildren's Trust,* D.J. Ref. 90–11–2–1000/2.

The proposed Consent Decree may be examined at U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94107. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.*

A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing Tonia Fleetwood at fax no. (202) 514–0097 (phone confirmation number (202) 514–1547) or by e-mailing Tonia Fleetwood at *tonia.fleetwood@usdoj.gov.* In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $69.50 (25 cents per page reproduction cost × 278 pages) payable to the U.S. Treasury. In requesting a copy of the Consent Decree, exclusive of exhibits, please enclose a check in the amount of $15.25 (25 cents per page reproduction cost × 61 pages) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06–928 Filed 1–31–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree under the Residential Lead-Based Paint Hazard Reduction Act

Notice is hereby given on December 9, 2005, a proposed consent decree in *United States* v. *V.T. Fallon dba VTF Properties*, Civil Action No. 05–2830 RJL/AKB, was lodged with the United States District Court for the District of Minnesota.

The consent decree settles claims against the owner and management company of approximately eleven

residential properties containing approximately 124 units located in Minneapolis, Minnesota. The claims were brought on behalf of the Department of Housing and Urban Development (''HUD'') and the Environmental Protection Agency (''EPA'') under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act''). The United States alleged in the complaint that the defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the consent decree, defendant will certify that he is complying with residential lead paint notification requirements. He has agreed to hire contractors to complete risk assessments and has agreed to abate all lead-based paint hazards identified in all residential properties he owns and manages. Defendant is required to complete abatement of one-fifth of his portfolio each year, and to complete all required hazard abatement activities within five years after HUD and EPA approve Defendant's hazard abatement plan. The schedule for hazard abatement will be accelerated to require completion of abatement in any unit within five months of Defendant learning about the presence of a child with an elevated blood-lead level (in addition to the requirement to comply immediately with any abatement order issued by a local government which requires any immediate measures to protect a poisoned child).

In addition, Defendant will pay a civil penalty of $7,500 to the United States. Defendant will also perform a child health improvement project of $50,000 to provide for a mobile testing vehicle to conduct lead screening and testing of children in the Minneapolis-St. Paul area within two years after entry of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States* v. *V.T. Fallon dba VTF Properties*, D.J. #90–5–2–1–08752.

The proposed consent decree may be examined at the Department of Housing and Urban Development, Office of General Counsel, 451 7th St. NW., Room 9262, Washington, DC 20410; at the office of the United States Attorney for the District of Minnesota, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, 55415 (Attn. Assistant United States Attorney Gregory G. Brooker); and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction costs), payable to the U.S. Treasury for the consent decree in *United States* v. *V.T. Fallon dba VTF Properties*, D.J. #90–5–2–1–08752.

Karen S. Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06-927 Filed 1–31–06:8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy in 28 CFR 50.7, notice is hereby given that on January 13, 2006, a proposed Consent Decree in *United States* v. *Quaker City, Inc.*, Consolidated Civil Action Nos. 99–3715, 02–8964, 03–3231, 05–5938, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action, the United States sought recovery of environmental response costs incurred by the United States in connection with the Malvern TCE Superfund Site, located in Chester County, PA. The Consent Decree requires the settling Defendant to pay the United States the sum of $600,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Quaker City Inc.*, D.J. Ref. #90–11–3–08512. The Consent Decree may also be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, c/o Marilyn May, Assistant United States Attorney, 615 Chestnut Street, Philadelphia, PA 19106; and at U.S. EPA Region III, c/o Joan A. Johnson, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may be examined on the Department of Justice Web site: *http://www.usdoj.gov/enrd/open/html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 for the Consent Decree (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–926 Filed 1–31–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: New collection: Census of Jail Facilities.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics 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 collected is published to obtain comments from the public and affected agencies. The proposed information collected was previously published in the **Federal Register** at Volume 70, Number 168, page 51846, on August 31, 2005, allowing a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until March 3, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Requests for 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 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 submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the Form/Collection:* Census of Jail Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–3F. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: County and City jail authorities and Tribal authorities. The Census of Jail Facilities, together with the Census of Jail Inmates, is the foundation for all national statistics on local jails and inmates. These censuses provide the frames from which to generalize to the Nation and to track changes over time. Without a periodic census, sample surveys would be unreliable, only sources of objective descriptions of the operation of local jails.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Three thousand eighty-four respondents each taking an average of 120 minutes to respnd.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,168 annual total burden hours associated with the collection.

If additional information is required, contact: Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20531.

Dated: December 23, 2005.

Robert B. Briggs,

Clearance Officer, United States Department of Justice.

[FR Doc. E6–1219 Filed 1–31–06; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act; Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: February 10, 2006.

February 10, 2006,
9:30 a.m.–11:30 a.m. (MT)

Sessions:

9:30 a.m.–10:30 a.m.	Open.
10:30 a.m.–10:40 a.m.	Executive Closed.
10:40 a.m.–10:50 a.m.	Closed.
10:50 a.m.–11:30 a.m.	Open.

PLACE: University of Colorado, University Memorial Center, Rooms 235 and 245, Boulder, Colorado.

CONTACT INFORMATION: Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for updated schedule. NSB Office: Mrs. Susan E. Fannoney (703) 292–7000.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Friday, February 10, 2006

Open

Committee on Programs and Plans (9:30 a.m.–10:30 a.m.) Room 235

- Approval of November 2005 Minutes
- Status Report on Hurricane Science & Engineering Task Force
- NSB Information Items:
  - —Large Hadron Collider Plans for the Transition from the Pre-Operations Phase to the Operations Phase
  - —Plan to Conduct a Renewal Review of the National High Magnetic Field Laboratory
- Status Report: Cyberinfrastructure Vision

Committee on Education and Human Resources (9:30 a.m.–10:30 a.m.) Room 245

- Approval of December 2005 Minutes
- The National Science Digital Library
- NSF Integration of Research and Education
- Focus of NSB/EHR Activities in 2006

Plenary Session of the Board (10:30 a.m.–11:30 a.m.)

Executive Closed Session (10:30 a.m.–10:40 a.m.) Room 235

- Approval of December 2005 Executive Closed Minutes
- Election of Executive Committee Member

Closed Session (10:40 a.m.–10:50 a.m.) Room 235

- Approval of December 2005 Closed Session Minutes
- Update on NSF Executive Personnel Actions

Open Session (10:50 a.m.–11:30 a.m.) Room 235

- Approval of December 2005 Minutes
- Resolution to Close March 2006
- Chairman's Report
- Director's Report
  - —Update on development of NSF Strategic Plan
  - —Overview of President's FY 2007 NSF Budget Request
  - —NSF Congressional Update
- Open Committee Reports

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 06–949 Filed 1–27–06; 4:36 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103–ML; ASLBP No. 04–826–01–ML]

Atomic Safety and Licensing Board; Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Paul B. Abramson, Dr. Charles N. Kelber; In the Matter of Louisiana Energy Services, L.P. (National Enrichment Facility); Notice of Hearing and of Opportunity To Make Oral or Written Limited Appearance Statements

January 26, 2006.

The Atomic Safety and Licensing Board hereby gives notice that it will convene an evidentiary session to receive testimony and exhibits in the ''mandatory hearing'' portion of this proceeding regarding the December 2003 application of Louisiana Energy Services, L.P., (LES) for a license under 10 CFR part 70 to construct and operate a uranium enrichment facility—the National Enrichment Facility (NEF)—to be constructed near Eunice, New Mexico. This mandatory hearing will concern safety and environmental matters other than those being litigated in the ongoing ''contested'' hearing that pertains to admitted issues proffered by intervening parties regarding the LES application. In addition, the Board gives notice that, in accordance with 10 CFR 2.315(a), it will entertain oral limited appearance statements from members of the public in connection with this proceeding.

A. Date, Time, and Location of Mandatory Hearing

The Board will conduct a mandatory hearing regarding the sufficiency of the LES application and NRC staff's environmental findings relative to the LES application,[1] beginning at 9 a.m., Mountain Standard Time (MST) on Monday, March 6, 2006, at the New Mexico Junior College, Moran Building Multi-Purpose Room, 5317 Lovington Highway, Hobbs, New Mexico. The hearing on these issues will continue day-to-day until concluded.

The public is advised that, in accordance with 10 CFR 2.390, portions of the hearing sessions may be closed to the public because the matters at issue may involve the discussion of protected information.

[1] LES and the staff will be parties to the mandatory hearing and will present witnesses and evidentiary material.

B. Date, Time, and Location of Oral Limited Appearance Statement Sessions

These sessions will be on the following date at the specified location and times:

1. *Date:* Sunday, March 5, 2006.
   Time: Afternoon Session (if there is sufficient interest)—3 to 5 p.m. MST.
   Location: New Mexico Junior College, Moran Building Multi-Purpose Room, 5317 Lovington Highway, Hobbs, New Mexico.
2. *Date:* Monday, March 6, 2006.
   Time: Evening Session (if there is sufficient interest)—7 to 9 p.m. MST.
   Location: Same as Session 1 above.

C. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or the representative of a party, to the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board and/or the parties in their consideration of the issues in this proceeding.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as may be necessary to accommodate the speakers who are present.[2] In this regard, if all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending times listed above. The Board also reserves the right to cancel the Sunday afternoon and/or Monday evening sessions scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

The time allotted for each statement normally will be no more than five minutes, but may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section D below and/or the number of persons present at the designated times. In addition, although an individual who has previously addressed the Licensing Board at a limited appearance session, including the January 12, 2005 sessions in Eunice, New Mexico or, in the case of the Monday evening session, the Sunday afternoon session, may request an opportunity to make an additional presentation, the Board reserves the right to defer such additional presentations until after it has heard from speakers who have not had an opportunity to make an initial presentation.

[2] Any members of the public who plan to attend either the evidentiary hearings or the limited appearance sessions are advised that security measures may be employed at the entrance to the hearing facility, including searches of hand-carried items such as briefcases or backpacks. Also, during the limited appearance sessions, signs no larger than 18″ by 18″ will be permitted, but may not be attached to sticks, held up, or moved about in the rooms.

D. Submitting a Request To Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5 p.m. Eastern Standard Time on *Wednesday, February 22, 2006*. The request must specify the session (Sunday or Monday) during which the requester wishes to make an oral statement. Based on its review of the requests received by February 22, 2006, the Licensing Board may decide that the Sunday afternoon and/or Monday evening sessions will not be held due to a lack of adequate interest in those sessions.

Written requests to make an oral statement should be submitted to:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1966).

E-mail: *hearingdocket@nrc.gov.*

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–6094).

E-mail: *emp1@nrc.gov* and *gpb@nrc.gov.*

E. Submitted Written Limited Appearance Statements

A written limited appearance statement may be submitted to the Board regarding this proceeding at any time. Such statements should be sent to the Office of the Secretary using the

methods prescribed above, with a copy to the Licensing Board Chairman.

F. Availability of Documentary Information Regarding the Proceeding

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).[3] Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

G. Scheduling Information Updates

Any updated/revised scheduling information regarding the evidentiary hearing and limited appearance sessions can be found on the NRC Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* or by calling (800) 368–5642, extension 5036, or (301) 415–5036.

Dated: January 26, 2006; Rockville, Maryland.

For the Atomic Safety and Licensing Board.[4]

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. E6–1324 Filed 1–31–06; 8:45 am]

BILLING CODE 7590–01–P

[3] Some documents determined by the staff to contain ''sensitive'' information are publicly available only in redacted form; non-sensitive documents are publicly available in their complete form. In addition, some documents that may contain information proprietary to LES are publicly available only in redacted form.

[4] Copies of this notice were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors Nuclear Information and Resource Service/Public Citizen; (3) the New Mexico Environment Department and the Attorney General of New Mexico; and (4) the staff.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting Notice

The agenda for the 529th ACRS meeting, scheduled to be held on February 9–11, 2006, has been revised as noted below. Notice of this meeting was previously published in the **Federal Register** on Wednesday, January 25, 2006 (71 FR 4177).

The discussion of the topic on the Application of the TRACG Code for Analyzing ESBWR Stability scheduled to be held on Thursday, February 9, 2006 between 8:35 and 10:30 a.m. has been postponed to a future ACRS meeting as requested by the NRC staff. The discussion of the item on FERRET Reactor Vessel Fluence Methodology scheduled to be held on Friday, February 10, 2006 between 8:35 and 10 a.m. has been moved to Thursday, February 9, 2006, between 12:45 and 2:15 p.m. The times for discussion of other items previously published in the **Federal Register** have been adjusted as noted in the revised agenda to facilitate effective use of the Committee's time. A revised agenda is posted on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

FOR FURTHER INFORMATION CONTACT: Mr. Sam Duraiswamy, ACRS, (Telephone: 301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

Dated: January 26, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–1308 Filed 1–31–06; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the Federal Register notifying the public, that the Agency is preparing an information collection request for OMB review, approval, and request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and ways to minimize the reporting burden, including automated collection techniques by using other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained form the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie S. Bryant, Records Management Officer, Overseas Private investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulator Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; (202) 395–3897

Summary Form Under Review

Type of Request: Reinstatement, with change, of a previously approved collection for which approval is expiring.

Title: Sponsor Disclosure Report.

Form Number: OPIC–129.

Frequency of Use: Once per major sponsor, per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. Companies sponsoring projects overseas.

Reporting Hours: 5 hours per project.

Number of Responses: 300 per year.

Federal Cost: $66,000 per year.

Authority for Information Collection: Sections 231, 234 (b), and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 129 form is the principle document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: January 24, 2006.

Eli Landy,

Senior Counsel for Administrative Law, Department of Legal Affairs.

[FR Doc. 06–930 Filed 1–31–06; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public, that the Agency is preparing an information collection request for OMB review, approval, and request public review and comment on the submission. Comments are being solicited on the need for the information, the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and ways to minimize the reporting burden, including automated collection techniques by use of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 60 calendar days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie S. Bryant, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulator Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; (202) 395–3897.

Summary Form Under Review

Type of Request: Renewal/Revision.

Title: Expedited Screening Questionnaire On-Lending Transactions.

Form Number: OPIC–168.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4.0 hours per project.

Number of Responses: 300 per year.

Federal Cost: $17,000 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country's economy, and collect information for underwriting analysis.

Dated: January 24, 2006.

Eli Landy,

Senior Counsel for Administrative Law, Department of Legal Affairs.

[FR Doc. 06–931 Filed 1–31–06; 8:45 am]

BILLING CODE 3210–01–M

POSTAL SERVICE

Sunshine Act Meeting; Board of Governors

TIMES AND DATES: 10:30 a.m., Tuesday, February 7, 2006; 8:30 a.m. and 10 a.m., Wednesday, February 8, 2006.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: February 7—10:30 a.m. (Closed); February 8—8:30 a.m. (Open); February 8—10 a.m. (Closed).

MATTERS TO BE CONSIDERED:

Tuesday, February 7 at 10:30 a.m. (Closed)

1. Strategic Planning.
2. Financial Update.
3. Rate Case Planning.
4. Labor Negotiations Planning.
5. Negotiated Service Agreement.
6. Capital Investment—Remote Encoding System.
7. Personnel Matters and Compensation Issues.

Wednesday, February 8 at 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 10, 2006.
2. Remarks of the Postmaster General and CEO Jack Potter.
3. Appointment of Members to Board Committees and Committee Reports.
4. Capital Investment—Flats Sequencing System and Delivery Point Packager Research & Development Modification.
5. Quarterly Report on Financial Performance.
6. Tentative Agenda for the March 28, 2006, meeting in Washington, DC.

Wednesday, February 8 at 10 a.m. (Closed) (If Needed)

1. Continuation of Tuesday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 06–995 Filed 1–30–06; 3:33 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 0–1; SEC File No. 270–472; OMB Control No. 3235–0531.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previous approved collections of information discussed below.

The Investment Company Act of 1940 (the ''Act'') [1] establishes a comprehensive framework for regulating the organization and operation of investment companies (''funds''). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.[2]

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0–1 [17 CFR 270.0–1].[3] Rule 0–1, as subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0–1 defines terms that serve as conditions to the availability of

[1] 15 U.S.C. 80a–1.

[2] For example, fund directors must approve investment advisory and distribution contracts. *See* 15 U.S.C. 80a–15(a), (b), and (c).

[3] Investment Company Act Release No. 4 (Oct. 29, 1940) [5 FR 4316 (Oct. 31, 1940)]. Note that rule 0–1 was originally adopted as rule N–1.

certain of the Commission's exemptive rules. More specifically, the term ''independent legal counsel,'' as defined in rule 0–1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules under the Act (''exemptive rules'').[4]

The Commission amended rule 0–1 to include the definition of the term ''independent legal counsel'' in 2001.[5] This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an ''independent legal counsel.'' This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board's counsel has represented the fund's investment adviser, principal underwriter, administrator (collectively, ''management organizations'') or their ''control persons'' [6] during the past two years, rule 0–1 requires that the board's independent directors make a determination about the adequacy of the counsel's independence. A majority of the board's independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel's prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel's professional judgment and legal representation. Rule 0–1 also requires that a record for the basis of this determination is made in the minutes of the directors' meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of ''independent legal counsel'' under rule 0–1. We assume that approximately 3870 funds rely on at least one of the exemptive rules annually.[7] We further assume that the independent directors of approximately one-third (1290) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.[8] We estimate that each of these 1290 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 968 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately $66,126. To calculate this total annual cost, the Commission staff assumed that two-thirds of the total annual hour burden (645 hours) would be incurred by compliance staff with an average hourly wage rate of $89 per hour,[9] and one-third of the annual hour burden (323 hours) would be incurred by clerical staff with an average hourly wage rate of $27 per hour.[10]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F. Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 25, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1310 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

[4] The relevant exemptive rules are: Rule 10f–3 [17 CFR 270.10f–3], Rule 12b–1 [17 CFR 270.12b–1], Rule 15a–4(b)(2) [17 CFR 270.15a–4(b)(2)], Rule 17a–7 [17 CFR 270.17a–7], Rule 17a–8 [17 CFR 270.17a–8], Rule 17d–1(d)(7) [17 CFR 270.17d–1(d)(7)], Rule 17e–1(c) [17 CFR 270.17e–1(c)], Rule 17g–1 [17 CFR 270.17g–1], Rule 18f–3 [17 CFR 270.18f–3], and Rule 23c–3 [17 CFR 270.23c–3].

[5] *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3735 (Jan. 16, 2001)].

[6] A ''control person'' is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund's management organizations. *See* 17 CFR 270.01(a)(6)(iv)(B).

[7] Based on statistics compiled by Commission staff, we estimate that there are approximately 4300 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (3870) actually rely on at least one exemptive rules annually.

[8] We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

[9] The staff estimates concerning the wage rate for professional time and for clerical time are based on salary information complied by the Securities Industry Association. We use the annual salaries listed for the Director of Compliance and Executive Secretary positions to make our estimates. *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry* (2004) (available in part at *http://www.careerjournal.com/salaryhiring* (last visited Sept. 14, 2005)). Note that the average hourly wage rate estimates are modified for an 1800-hour work-year, 2.7% inflation and adjusted upward by 35% to reflect possible overhead costs and employee benefits.

[10] (645 × $89/hour) + (323 × $27/hour) = ($66,126).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 3a–8; SEC File No. 270–516; OMB Control No. 3235–0574.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB''), a request for extension of the previously approved collection of information discussed below.

Rule 3a–8 of the Investment Company Act of 1940 (the ''Act''), serves as a nonexclusive safe harbor from investment company status for certain research and development companies (''R&D companies''). The rule requires

that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents.[1] An R&D company seeking to rely on the safe harbor must retain these records only as long as such records must be maintained in accordance with state law.

Rule 3a–8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that relies on the safe harbor under rule 3a–8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a–8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. The purposes of the information collection requirements in rule 3a–8 are to ensure that: (i) The board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act, and (ii) adequate records are available for Commission review, if necessary. Rule 3a–8 would not require the reporting of any information or the filing of any documents with the Commission.

Commission staff estimates that there is no annual recordkeeping burden associated with the rule's requirements. Nevertheless, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

There are approximately 33,000 R&D companies in the Unites States.[2] Rule 3a–8 impacts non-manufacturing R&D companies that would fall within the definition of investment company pursuant to section 3(a)(1)(C) of the Act [15 U.S.C. 80a–3(a)(1)(C)].[3] Of the 16,170 non-manufacturing R&D Companies, the Commission believes that companies in scientific R&D services are more likely to use the exemption provided by rule 3a–8.[4] This field comprises companies that specialize in conducting R&D for other organizations, such as many biotechnology companies.[5] It accounts for 18%, or approximately 2910 companies.[6] Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),[7] the Commission believes that all the companies that seek to rely on rule 3a–8 would have adopted their board resolutions and established written investment guidelines in 2003 when the rule was adopted. We expect that newly formed R&D companies would adopt the board resolution and investment guidelines simultaneously with their formation documents in the ordinary course of business.[8] Therefore, we estimate that rule 3a–8 will not create additional time burdens.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 25, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1314 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

[1] Rule 3a–8(a)(6). This requirement is modeled on the requirement in rule 3a–2 under the Act that provides a temporary exemption from the Act for transient investment companies. 17 CFR 270.3a–2.

[2] See National Science Board, Science and Engineering Indicators 2004 (''NSB Indicators'') (available at *http://www.nsf.gov/statistics/seind04/*).

[3] The Act provides certain exclusions from the definition of investment company for a company that is primarily engaged in a non-investment business. 15 U.S.C. 80a–3(b)(1). For purposes of this PRA analysis, we assume that all manufacturing R&D companies are primarily engaged in the manufacturing industry and, therefore, may rely on the exclusion for companies primarily engaged in a non-investment business. For example, the top two manufacturing R&D companies in terms of dollars spent are Ford Motor Company and General Motors, which are primarily engaged in motor vehicle manufacturing. See NSB Indicators, supra note 2.

[4] We believe that R&D Companies in this field are most likely to rely on the rule because they often raise and invest large amounts of capital to fund their research and product development and may make strategic investments in other R&D companies to develop products jointly. These activities may cause the R&D companies to fall within the definition of investment company and fail to qualify for statutory exclusions under the Act when using the Commission's traditional analysis. See Certain Research and Development Companies, Release No. 26077 (Jun. 16, 2003) [68 FR 37045 (Jun. 20, 2003)], at n. 12 and accompanying text (''Rule 3a–8 Release'').

[5] See NSB Indicators, supra note 2.

[6] Id.

[7] In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and recorded in the ordinary course of business and would not create additional time burdens.

[8] In order for these companies to raise sufficient capital to fund their product development stage, we believe they will need to present potential investors with investment guidelines. Investors would want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–7; SEC File No. 270–238; OMB Control No. 3235–0214.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information described below.

Rule 17a–7 [17 CFR 270.17a–7] under the Investment Company Act of 1940 (the ''Act'') is entitled ''Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.'' It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies (''funds''), that are affiliated persons (''first-tier affiliates'') or affiliated persons of affiliated persons (''second-tier affiliates''), or between a fund and a first- or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a–7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund's board of directors to establish procedures reasonably designed to ensure that the rule's conditions have been satisfied.

The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.[1] The Commission's examination staff uses these records to evaluate for compliance with the rule.

The Commission estimates that approximately 968 funds enter into transactions effected in reliance on rule 17a–7 each year and, therefore, are subject to the rule's information collection requirements.[2] The average annual burden for rule 17a–7 is estimated to be approximately two burden hours per respondent, for an annual total of 1935 burden hours for all respondents.[3] The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Rule 17a–7 requires investment companies to maintain and preserve permanently a written copy of the procedures governing rule 17a–7 transactions. In addition, investment companies are required to maintain written records of each rule 17a–7 transaction for a period of not less than six years from the end of the fiscal year in which the transaction occurred. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[1] The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

[2] These estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives. Based on these conversations, the Commission staff estimates that most investment companies (3870 of the estimated 4300 registered investment companies) have adopted procedures for compliance with rule 17a–7. Of these 3870 investment companies, the Commission staff estimates that each year approximately 25% (968) enter into transactions affected by rule 17a–7.

[3] This estimate is based in turn on the staff's estimate that the approximately 968 funds that rely on rule 17a–7 annually engage in an average of 8 rule 17a–7 transactions and spend approximately 15 minutes per transaction on recordkeeping required by the rule.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 24, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1317 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ac2–1; SEC File No. 270–95; OMB Control No. 3235–0084.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collection for public comment. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ac2–1 under the Securities Exchange Act of 1934 (the ''Act'') is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that on an annual basis, the Commission will receive approximately 100 applications for registration on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are amendments made to Form TA–1 as required by Rule 17Ac2–1(c). Based upon past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 is one and one-half hours, with a total burden of 150 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: January 25, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1320 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 498; File No. 270-435; OMB Control No. 3235-0488.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''Act'') [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 498 Under the Securities Act of 1933, Profiles for Certain Open-end Management Investment Companies

Rule 498 of the Securities Act of 1933 [17 CFR 230.498] permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) (''funds'') to

provide investors with a ''profile'' that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees, in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission thirty days before first use. Such a filing allows the Commission to review the profile for compliance with Rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 1 initial profile and 252 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 1.25 portfolios filed annually on initial profiles and 315 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under Rule 498 is 3,181, representing a decrease of 1,269 hours from the prior estimate of 4,450. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The collection of information under Rule 498 is voluntary. The information provided by Rule 498 is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 24, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1323 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27215; 812–13008]

Hutchinson Technology Incorporated; Notice of Application

January 25, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 3(b)(2) of the Investment Company Act of 1940 (the ''Act'').

Summary of Application: Hutchinson Technology Incorporated (''HTI'') seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. HTI, directly and through its wholly-owned subsidiaries, develops, manufactures, markets and services suspension assemblies for hard disk drives.

Filing Dates: The application was filed on August 18, 2003, and amended on October 23, 2003 and January 23, 2006.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 21, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicant, c/o John A. Ingleman, Vice President and Chief Financial Officer, 40 W. Highland Park Dr. NE., Hutchinson, Minnesota 55350.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. HTI, a Minnesota corporation, is in the business of developing, manufacturing, marketing and servicing suspension assemblies for hard disk drives. HTI estimates that it produces a majority of all suspension assemblies sold to disk drive manufacturers and their suppliers, including recording head manufacturers, worldwide. HTI represents that suspension assemblies are critical components of disk drives that hold the recording heads in position above the spinning magnetic disks. In addition to HTI's suspension assembly products, HTI has developed a medical device that uses an optical technology to measure local oxygen saturation of hemoglobin in tissue.

2. HTI states that it requires substantial liquid capital to fund its global operations, including research and development activities and capital expenditures. HTI states that the disk drive industry is subject to rapid technological change, and HTI's ability to remain competitive depends on, among other things, its ability to anticipate and respond to these changes. As a result, HTI has devoted and will continue to devote substantial resources to product development and process engineering efforts. HTI also requires substantial liquid capital for capital expenditures. HTI expects that it will need to make substantial capital expenditures over the next several years to remain at the forefront of industry technology transitions. In particular, technology transitions in the disk drive industry require HTI to dramatically increase its level of capital expenditures. HTI also states that demand for disk drives is subject to rapid or unforeseen changes resulting from, among other things, changes in disk drive inventory levels, technological advances, responses to competitive price changes and unpredicted high or low market

acceptance of new drive models. HTI seeks to preserve its capital and maintain liquidity, pending the use of such capital for its current and future operations, by investing in short-term investment grade and liquid fixed income and money market investments that earn competitive market returns and provide a low level of credit risk (''Capital Preservation Investments''). HTI's board of directors (''Board of Directors'') oversees HTI's investment practices and defines the parameters for investment activities. HTI states that it does not invest in securities for short-term speculative purposes.

Applicant's Legal Analysis

1. HTI seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act. HTI states that as of September 25, 2005, approximately 15.8% of its total assets (exclusive of government securities and cash items), on an unconsolidated basis, consisted of investment securities as defined in section 3(a)(2) of the Act.

3. Rule 3a–1 provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than government securities, securities of majority-owned subsidiaries and primarily controlled companies. HTI states that it cannot rely upon rule 3a–1 under the Act because such other securities frequently exceed 45% of its total assets. For example, in the second and third quarters of fiscal 2004, had all HTI's available liquid capital other than cash required for immediate use been invested in such other securities, the percentage of HTI's total assets represented by such securities would have been 46.3% and 46.6%, respectively. HTI further states that it cannot rely on rule 3a–1 because the percentage of its net income derived from investment securities fluctuates unpredictably with the cycles of the disk drive industry. HTI states that the cyclical nature of the industry, rather than any change in HTI's business or financial management policies, has led to significant variations in the ratio of HTI's income from investment securities relative to net operating income.

4. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of businesses. HTI requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

5. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[1]

a. *Historical Development.* HTI was incorporated in 1965 in Minnesota, and conducted its initial public offering in 1985. Until 1976, HTI derived a substantial portion of its revenues from photoetching and from laminating precision components primarily for use by original equipment manufacturers in the computer peripheral industry. In 1976, HTI began adding laser welding steps to the production of some components, and by 1979 had developed significant abilities in precision forming as well. In 1982, HTI began to use its forming and welding processes, in combination with proprietary cleaning processes, to manufacture suspension assemblies for both Winchester and the newer Thin-Film technology disk drives. In the late 1980s, HTI's revenue began to come almost exclusively from the sale of suspension assemblies, and HTI has continued to focus on suspension assembly sales and development ever since.

b. *Public Representations of Policy.* HTI states that it has consistently represented itself as a company that manufactures and sells products for the disk drive industry, rather than a company focused on investments.

c. *Activities of Officers and Directors.* HTI states that its Board of Directors has eight members who focus on maintaining HTI's position as a leading supplier of suspension assemblies. HTI's Investment Goals and Guidelines require the Board of Directors to review them at least annually. Historically, the Board has approved the guidelines on an annual basis. Aside from these activities, none of HTI's directors is involved with HTI's investments for any significant amount of time. HTI's treasurer and chief financial officer are the only officers who devote time to HTI's investments. An estimated 5% of the treasurer's time and 1% of the chief financial officer's time is spent on investment-related work, and HTI expects that this will continue to be the case if the requested order is granted. HTI currently has approximately 5,300 regular employees working in its four domestic manufacturing plants and overseas.

d. *Nature of Assets.* As of September 25, 2005, approximately 15.8% of the value (as defined in section 2(a)(41)(A) of the Act) of HTI's total assets (excluding government securities and cash items), on an unconsolidated basis consisted of investment securities.

e. *Sources of Income and Revenue.* Applicant states that since the late 1980s, it has derived virtually all of its revenue, and net income after taxes, from the sale of suspension assemblies. For fiscal 2005, net income after taxes from investments was 10.3% of HTI's total net income after taxes. Net income after taxes from investments (including government securities, money market fund shares and interest on cash balances) was 9.5%, 6.8% and 35.4% of HTI's total net income after taxes in fiscal 2004, 2003 and 2002, respectively. In addition, for fiscal 2005, revenue from investments was only 1.2% of HTI's total revenue. In fiscal 2004, 2003 and 2002, revenue from investments was only 1.0%, 1.2%, and 1.8% of total revenue. HTI submits that an analysis of the sources of its revenue (especially in periods where HTI reported net losses) provides a more meaningful, and even more compelling, picture of the nature and extent of HTI's primary business operations. In the future, HTI expects substantially all of its revenues to come

[1] Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

from operations and less than 2% from investment securities.

6. HTI thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

Applicant's Conditions

1. HTI will continue to allocate and utilize its accumulated cash and investments for bona fide business purposes.

2. HTI will refrain from investing or trading in securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–1226 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53181; File No. SR–CHX–2005–40]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Session Fee Increase for the Regulatory Element of the Continuing Education Program

January 26, 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 December 30, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CHX under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 CHX proposes to amend its Participant Fee Schedule (the ''Fee Schedule'') to incorporate the session fee for the Regulatory Element of the continuing education requirements set out in CHX rules. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* at the CHX, 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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchange is proposing to incorporate, in its Fee Schedule, the session fee paid by Exchange participants for the Regulatory Element of the continuing education program required by CHX Rules. Under Exchange rules, registered persons associated with CHX participant firms are required to complete the Regulatory Element of the continuing education program on the second anniversary of their registration and every three years after that date, or as otherwise prescribed by the Exchange.[5] The Regulatory Element is a computer-based education program administered by the National Association of Securities Dealers (''NASD'') that is designed to help ensure that registered persons are kept up-to-date on regulatory, compliance and sales practice matters in the industry. The Regulatory Element is a component of the Securities Industry Continuing Education Program (the ''Program''). The Securities Industry/Regulatory Council on Continuing Education (the ''Council'') was organized in 1995 to facilitate cooperative industry and regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program and developing and updating information about the Program for industry-wide dissemination.

The Exchange understands that it is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.[6] In December 2003, the Council voted to reduce the Regulatory Element session fee from $65 to $60, effective January 1, 2004. Although there was no change to the fee for 2005, the Council has decided to increase the Regulatory Element session fee from $60 to $75, effective January 1, 2006, in order to meet costs and maintain an adequate reserve in 2006.[7] Through this filing, the Exchange proposes to incorporate the $75 fee into its Fee Schedule.

2. Statutory Basis

The Exchange believes this proposed rule change is consistent with section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee or other charge imposed by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* CHX Article VI, Rule 9.

[6] The Council currently consists of 20 individuals, including six representatives of self-regulatory organizations and 14 persons who are associated with NASD member firms. The Commission and the North American Securities Administrators Association have liaisons to the Council. The Exchange does not have a representative serving on the Council.

[7] *See* Securities Exchange Act Release No. 52947 (December 13, 2005), 70 FR 75517 (December 20, 2005) (SR–NASD–2005–132).

[8] 15 U.S.C. 78(f)(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*);

or

- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CHX–2005–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–CHX–2005–40. 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 will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2005–40 and should be submitted on or before February 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1304 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53182; File No. SR–NASD–2005–135]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change Relating to the Status of Former Registered Persons Serving in the Armed Forces of the United States

January 26, 2006.

I. Introduction

On November 15, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to amend NASD IM–1000–2 to toll the two-year expiration provisions for qualification examination requirements set forth in NASD Rules 1021(c), 1031(c), and 1041(c) for certain former registered persons serving in the Armed Forces of the United States, including persons who commence their active military duty within two years after they have ceased to be registered with a member and persons who terminate their registration with a member while on active military duty. The proposed rule change was published for comment in the **Federal Register** on December 27, 2005.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

The filing proposes to amend NASD IM–1000–2 to toll the ''two-year licensing expiration provisions'' for a person previously registered with a member who commences his active military duty within two years after he has ceased to be registered with the member. Under the proposal, the tolling would start on the date such person enters active military service and would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. The proposal requires that NASD be properly notified of the person's period of active military service within 90 days following his completion of active service or upon his re-registration with a member, whichever occurs first. The proposal also provides that if such person does not re-register with a member within 90 days following his completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a member without being subject to the ''two-year licensing expiration provisions'' will consist of the standard two-year period reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

In addition, NASD is proposing to amend NASD IM–1000–2 to toll the ''two-year licensing expiration provisions'' for a person placed upon ''inactive'' status pursuant to NASD IM–1000–2 who while serving in the Armed Forces of the United States ceases to be registered with a member.[5] Under the proposal, the tolling would start on the date such person ceases to be registered with the member and would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. The proposal requires that NASD be properly notified of the person's period of active military service within two years following his completion of active service or upon his re-registration with a member, whichever occurs first. NASD is proposing to toll the ''two-year licensing expiration provisions'' for such persons based on available information in the Central Registration Depository (CRD) regarding their active military status. The proposal further provides that if such person does not re-

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52979 (December 19, 2005), 70 FR 76483.

[4] *See* e-mail from John C. Vallier dated January 18, 2006. The comment narrowly addresses the commenter's personal situation as a registered person serving in the Armed Forces of the United States and does not directly address the subject of this proposal.

[5] Persons on ''inactive'' status due to active military duty who do not cease their registration with a member while serving in the Armed Forces of the United States are not subject to the ''two-year licensing expiration provisions'' because they are considered registered for purposes of NASD Rules. *See* NASD IM–1000–2.

register with a member within 90 days following his completion of active service in the Armed Forces of the United States, the person would have 90 days plus two years following the end of the person's active service in the Armed Forces of the United States to become re-registered with a member.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[6] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change provides appropriate tailored relief to persons actively serving in the Armed Forces of the United States by tolling the ''two-year licensing expiration provisions'' in a manner consistent with the goals of investor protection and market integrity.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2005–135) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1307 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53176; File No. SR–NYSE–2005–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change To Amend Rule 445

January 25, 2006.

I. Introduction

On May 23, 2005, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to NYSE Rule 445. The Commission published the proposed rule change for comment in the **Federal Register** on July 6, 2005.[3] The Commission received one comment letter on the proposal.[4] On January 17, 2006, NYSE filed a response to the comment letter,[5] as well as Amendment No. 1 to the proposed rule change.[6] This order approves the proposed rule change, grants accelerated approval to Amendment No. 1 to the proposed rule change, and solicits comments from interested persons on Amendment No. 1.

II. Description of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 445 (the ''Anti-Money Laundering Compliance Rule'') to establish that the ''independent testing'' requirement of the rule must be conducted, at minimum, on an annual calendar-year basis by members and member organizations that conduct a public business, or every two years if no public business is conducted. The amendments also establish a standard to determine who is adequately qualified and sufficiently independent to conduct the required testing. Further, they clarify that each person designated to implement and monitor the Anti-Money Laundering Compliance Rule must either be an employee of the member or member organization for which they are designated or, with the prior approval of the Exchange, an employee of a parent, affiliate, or subsidiary of the member or member organization. Employees of a parent, affiliate, or subsidiary of a member or member organization who are designated to implement and monitor the Anti-Money Laundering Compliance Rule must consent to the jurisdiction of the Exchange and the member or member organization must acknowledge their responsibility to supervise them as employees.

Background and Detail

NYSE Rule 445, which became effective on April 24, 2002,[7] requires each member organization and each member not associated with a member organization to develop and implement an anti-money laundering (''AML'') program consistent with ongoing obligations pursuant to Treasury regulation 31 CFR 103.120 under the Bank Secrecy Act,[8] as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.[9]

The prescribed AML program obligations include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an ''AML Officer''); ongoing training for appropriate persons; and an independent testing function for overall compliance.

Neither the Bank Secrecy Act nor NYSE Rule 445 currently specifies: (1) Timeframes within which the independent testing function must be performed, (2) qualification and independence standards for those who conduct such testing function, or (3) jurisdictional requirements pertaining to AML Officers. In order to provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51934 (June 29, 2005), 70 FR 38994 (July 6, 2005).

[4] *See* letter from Alan E. Sorcher, Vice President and Associate General Counsel, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, SEC, dated July 27, 2005 (the ''SIA Letter'').

[5] *See* letter from Mary Yeager, Acting Corporate Secretary, NYSE, to Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, dated January 17, 2006 (the ''NYSE Response'').

[6] Amendment No. 1 amended the rule text to clarify that notice to the Exchange, as opposed to approval by the Exchange, is required if a person holding the AML Officer designation (employed by an entity that directly or indirectly controls, or is controlled by, or is under common control with the member or member organization), is replaced by another person and the structure of the arrangement has been previously approved by the Exchange.

[7] *See* Securities Exchange Act Release No. 45798 (April 22, 2002); 67 FR 20854 (April 26, 2002) (SR–NYSE–2002–10).

[8] Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330.

[9] Public Law No. 107–56, 115 Stat. 272 (2001).

interpretive clarity to the text, the following amendments to NYSE Rule 445 were proposed.

Timeframes for Independent Testing

The proposed amendments would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by members or member organizations that conduct a public business, or every two years if no public business is conducted (*i.e.*, if the member or member organization engages solely in proprietary trading, and/or conducts business only with other broker-dealers). The Exchange believes these timeframes are reasonable in that they require more frequent testing of AML programs designed to monitor a public business, which is likely more susceptible to money laundering schemes than strictly proprietary business. Further, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. However, the proposed amendments make clear that more frequent testing should be conducted if circumstances warrant (*e.g.*, should the business mix of the member or member organization materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via testing of the AML program; or in response to any other ''red flags'').

Qualification and Independence Standards for Testing

With regard to who is adequately qualified and sufficiently independent to conduct the independent testing function, the proposed amendments would require that testing be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Such person need not be an employee of the member or member organization since the responsibility being delegated is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party. As noted below, the proposed amendments require that the day-to-day responsibilities for monitoring operations and internal controls of AML programs be performed by a person fully subject to the supervision of the member or member organization for which they are designated, and to the jurisdiction of the Exchange.

The proposed amendments do not preclude an employee of the member or member organization from conducting the required independent testing of the AML program; however the proposed ''independence'' standard would prohibit testing from being conducted by a person who performs the functions being tested, or by the designated AML Officer, or by a person who reports to either. This standard is designed to promote the independence, and thus the integrity, of the testing function by insulating it from the day-to-day administration of the activities being tested. It also serves to remove the testing function from the supervisory structure of the member or member organization, thus eliminating the possibility that a person might not candidly report shortcomings in a system designed by their supervisor for fear of reprisal.

Jurisdiction Over AML Officers

The proposed amendments clarify that the AML Officer designated to implement and monitor a member's or member organization's AML Program must either be an employee of the member or member organization for which they are designated or, with the prior approval of the Exchange, an employee of a parent, affiliate or subsidiary of the member or member organization.[10]

The rationale behind the proposal to allow employees of parents, affiliates and subsidiaries to be designated AML Officers of members and member organizations is the recognition that AML programs may be integrated into, and extend throughout, the corporate family. Accordingly, a person acting as an AML Officer for both a member organization and the member organization's parent bank would be better situated to see the ''big picture'' (*i.e.*, to monitor the movements of funds and securities throughout the corporate structure and, thus, be better able to identify and understand AML issues across the range of such structure). The ability to situate AML Officers where they can be most effective gives members and member organizations the flexibility to integrate their AML program into the larger corporate structure to achieve a more global perspective, and thus a more comprehensive and effective AML program.

The prior written approval of the Exchange is required if the designated AML Officer is other than an employee of the member or member organization. Further, each such person must execute an attestation, acceptable to the Exchange, consenting to the supervision of each member or member organization for which they are designated and to the jurisdiction of the Exchange. A proposed example of such an attestation is included in Exhibit 3 of the proposed rule change, under the heading ''AML Officer Consent to Jurisdiction.''[11] In addition, the member or member organization must execute an agreement, acceptable to the Exchange, acknowledging their responsibility to supervise, as an employee for all regulatory purposes, each such person designated by them. A proposed example of such an agreement is included in Exhibit 3 of the proposed rule change under the heading ''Acknowledgement of Supervisory Responsibility over AML Officer.''[12]

III. Summary of Comments Received and NYSE Response

The Commission received one comment letter from the SIA on the proposal and a response to the comment letter by NYSE.

The SIA Letter noted that the ''NYSE proposal provides that the AML Compliance Person/Officer may be an employee of a parent, affiliate or subsidiary of the member or member organization with the 'prior approval of the Exchange.' ''[13] In the SIA's view prior approval should not be required because it would be impractical to obtain prior approval for each and every personnel change.[14]

The NYSE Response indicated that NYSE ''has a strong regulatory interest in retaining the right to review 'outside' AML Officer arrangements to make certain practical determinations (*e.g.*, whether the proposed arrangement is structured such that the AML Officer will be positioned to effectively implement the member organization's AML Program, and whether he or she will have sufficient time and resources to monitor the Program's day-to-day operations and internal controls).''[15] NYSE, however, indicated that its interests rest primarily in reviewing the structure of the arrangement in which an ''outside'' AML Officer is

[10] If a person holding the AML Officer designation is to be replaced by another person, and the structure of the arrangement has been previously approved by the Exchange, then notice to the Exchange of the designation change would be sufficient if the previously approved arrangement remained substantively unchanged.

[11] Exhibit 3 of the proposed rule change is available on the NYSE's Web site (*www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[12] *Id.*

[13] SIA Letter, *supra* note 4, at 3–4.

[14] *Id.* at 4.

[15] NYSE Response, *supra* note 5, at 2.

employed.[16] Accordingly, NYSE filed Amendment No. 1 to the proposed rule change to provide that ''if a person holding the AML Officer designation is to be replaced by another person, and the structure of the arrangement has been previously approved by the Exchange, then notice to the Exchange of the designation change would be sufficient if the previously approved arrangement remained substantively unchanged.'' [17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–36. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–36 and should be submitted on or before February 22, 2006.

V. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) [18] of the Exchange Act.[19] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs, preserve the independence of their testing personnel, and ensure the accuracy of their AML compliance program.

Accelerated Approval of Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act. Amendment No. 1 provides that notice to the Exchange, as opposed to approval by the Exchange, is required if a person holding the AML Officer designation (employed by an entity that directly or indirectly controls, or is controlled by, or is under common control with the member or member organization), is replaced by another person and the structure of the arrangement has been previously approved by the Exchange. Permitting Exchange members to submit a notice instead of seeking prior approval, in circumstances where the structure of the arrangement in which an outside AML Officer is employed has not changed, will permit the Exchange to monitor compliance while minimizing any regulatory burden on members. Accordingly, the Commission believes that accelerated approval of Amendment No. 1 is appropriate.

VI. Conclusions

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change, as amended (SR–NYSE–2005–36), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1227 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

[16] *Id.*

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

[19] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53180; File No. SR–Phlx–2005–90]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Session Fee Increase for the Regulatory Element of the Continuing Education Program

January 26, 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 December 23, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 Phlx proposes to amend its schedule of fees to increase the Regulatory Element Session fee from $60 to $75 effective January 1, 2006. The text of this proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

available on the Exchange's Web site (*http://www.phlx.com*), at the Phlx, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change provides notice to the Exchange's membership of the recent increase to the Regulatory Element Session fee from $60 to $75 effective January 1, 2006. The Regulatory Element, a computer-based education program administered by the National Association of Securities Dealers, Inc. (''NASD'') to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program (''Program''). The Securities Industry/Regulatory Council on Continuing Education (''Council'')[5] was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.

It is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.[6] In December 2003, the Council voted to reduce the Regulatory Element session fee from $65 to $60 effective January 1, 2004, in order to reduce the reserves to a level necessary to support current and expected programs and expenses. The Council decided to review the reserve level and evaluate the Regulatory Element session fee on an annual basis. The 2004 financial review and evaluation produced no change in the Regulatory Element session fee. In September 2005, the Council's annual financial review and evaluation revealed that unless the Regulatory Element session fee were adjusted, the Council's reserves were likely to be insufficient in 2006. The reasons for the declining surplus are: (1) Lower than projected session volume resulting in a significant decrease in actual revenue over projected revenue; (2) higher delivery-related expenses beginning in 2006; and (3) costs associated with the rebuilding of PROCTOR®.[7] At its September 2005 meeting, the Council voted unanimously to increase the Regulatory Element session fee from $60 to $75, effective January 1, 2006, in order to meet costs and maintain an adequate reserve in 2006.

Pursuant to Exchange Rule 640, each registered person is required to complete the Regulatory Element of the continuing education program.[8] The Regulatory Element Session fee continues to be payable directly to the NASD. A notice will be provided to the Exchange's membership of the increase in the fee and the effective date of the increase.

2. Statutory Basis

The Exchange believes this is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4)[10] and 6(b)(5)[11] of the Act, in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Phlx members and other persons using its facilities, and that Phlx rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Phlx believes that the proposed rule change is designed to accomplish these ends by enabling the Program to be maintained on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2) thereunder,[13] because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[5] The Council currently consists of 20 individuals, 14 of whom are securities industry professionals associated with NASD member firms, and six of whom represent self-regulatory organizations (the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, NASD, the New York Stock Exchange, Inc., and the Phlx).

[6] The Regulatory Element session fee was initially set at $75 when NASD established the continuing education requirements in 1995. The fee was reduced in 1999 to $65 and again in 2004 to $60. The proposed fee increase returns the Regulatory Element session fee to its original level.

[7] PROCTOR® is a technology system that supports computer-based testing and training. The Regulatory Element program uses PROCTOR® to package content, deliver, score and report results, and maintain and generate statistical data related to the Program.

[8] *See* Exchange Rule 640(a)(1) which states, ''Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the ''base date,'' shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.''

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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–Phlx–2005–90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–90 and should be submitted on or before February 22, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–1305 Filed 1–31–06; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Internal Revenue Service (IRS)—Match Number 1016)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program, which is scheduled to expire on December 31, 2005.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with the IRS.

DATES: IRS will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency, or agencies, participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: December 7, 2005.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With Internal Revenue Service (IRS)

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which IRS agrees to disclose to SSA certain return information for use in verifying eligibility for, and/or the correct amount of, benefits provided under title XVI of the Social Security Act, to qualified aged, blind and disabled individuals, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66, 87 Stat. 152).

C. Authority for Conducting the Matching Program

Section 6103(1)(7) of the Internal Revenue Code (26 U.S.C. 6103(1)(7)) authorizes the IRS to disclose return information with respect to unearned income to Federal, State, and local agencies administering certain benefit programs under the Social Security Act.

Section 1631(e)(1)(B) of the Social Security Act (42 U.S.C. 1383(e)(1)(B)) requires verification of Supplemental Security Income (SSI) eligibility and benefit amounts with independent or collateral sources.

D. Categories of Records and Individuals Covered by the Matching Program

SSA will provide the IRS with identifying information with respect to applicants for, and recipients of, benefits available under programs specified in this Agreement from the Supplemental Security Income Record and Special Veterans Benefit (SSR) system, SSA/ODSSIS 60–0103, as published at 66 FR 11079 (February 21, 2001). IRS will extract return information with respect to unearned income from the Wage and Information Returns Processing (IRP) File, Treas/IRS 22.061, hereafter referred to as the Information Return Master File (IRMF), as published at 66 FR 63797 (December 10, 2001), through the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program.

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E6–1318 Filed 1–31–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Altered System of Records

AGENCY: Social Security Administration (SSA)

ACTION: Altered system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to alter an existing system of records, the Master Representative Payee File, 60–0222. The proposed alterations will result in an expansion of the existing categories of records maintained in the Master Representative Payee File to include:

(1) Information about representative payee applicants who have been convicted of an offense resulting in more than one (1) year imprisonment;

(2) Information about representative payee applicants or payees who have an outstanding felony warrant; and

(3) Information about specific types of organizations which, having met certain requirements, may apply and be permitted to charge a fee for their payee services.

All of the proposed alterations are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comment on this proposal.

DATES: We filed a report of the proposed altered system of records with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on January 23, 2006. The proposed altered system of records will become effective on March 6, 2006, unless we receive comments warranting it not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Margo Wagner, Social Insurance Specialist, Disclosure Policy Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, in Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone at (410) 965–1482, e-mail: *margo.wagner@ssa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alterations to the Master Representative Payee File System of Records

A. General Background

The Master Representative Payee File system of records maintains information that Social Security field offices use when screening applicants to determine suitability as representative payees for Social Security claimants and beneficiaries who are incapable of handling their Social Security benefits and those who are required by law to have payees. The Master Representative Payee File system of records currently maintains records about all payees and payee applicants, including persons whose certifications as representative payees have been revoked or terminated on or after January 1, 1991; persons who have been convicted of a violation of section 208 or 1632 of the Social Security Act (the Act); persons convicted under other statutes in connection with services as a representative payee; and others whose certification as a representative payee SSA has revoked due to misuse of funds paid under Title II or Title XVI of the Act. The system also houses information on persons who are acting or have acted as representative payees; representative payee applicants who were not selected to serve as representative payees; and beneficiaries/applicants who are being served by representative payees.

B. Discussion of Proposed Alterations to the Master Representative Payee File System of Records

The Social Security Protection Act of 2004 (Pub. L. 108–203) amended section 205(j) of the Act. The amendment, which came into effect April 1, 2005, mandates that SSA not appoint payees, or permit the continued payee service of those payees, with certain types of criminal behaviors. To effectuate this provision which affords better protection to Social Security beneficiaries in need of a representative payee, SSA proposes an expansion of the collection of data in the application process to include:

1. Information about applicants wanting to serve as representative payees who have been imprisoned for more than one (1) year, and

2. Information about payees or payee applicants who have an outstanding fugitive felon warrant.

In addition to the above, under provisions in section 205(j) in existence prior to the implementation of Pub. L. 108–203, SSA will collect information about specific types of organizations which, having met certain requirements, may apply and be permitted to charge a fee for their payee services.

II. Record Storage Medium and Safeguards for the Information Maintained in the Proposed Altered Master Representative Payee File System of Records

The Master Representative Payee File system of records maintains information in electronic and manual forms. Only authorized SSA personnel that have a need for the information in the performance of their official duties are permitted access to the information. Security measures include the use of access codes to enter the computer system that will maintain the data and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. Manually maintained records are kept in locked cabinets or in otherwise secure areas.

III. Effect of the Proposed Alterations to the Master Representative Payee File System of Records on the Rights of Individuals

The proposed alterations to the Master Representative Payee File system of records pertain to SSA's responsibilities in collecting and maintaining information about representative payee applicants for Social Security beneficiaries in cases in which the Commissioner of Social Security has determined that the interests of the beneficiaries would be better served by their having a representative payee. We will adhere to all applicable statutory requirements, including those under the Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed alterations will have an unwarranted adverse effect on the rights of individuals.

Dated: January 23, 2006.

Jo Anne B. Barnhart,

Commissioner.

SYSTEM NUMBER:

60–0222.

SYSTEM NAME:

Master Representative Payee File, Social Security Administration, Office of Income Security Programs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Computer Center, Social Security Administration, 6201 Security Boulevard, Baltimore, MD 21235. The system database will be available by direct electronic access by Social Security field offices (FO).

FO addresses and telephone numbers can be found in local telephone directories under ''Social Security Administration,'' (SSA) or by accessing *www.ssa.gov/regions/regional.html*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about all payees and payee applicants, including persons whose certifications as representative payees have been revoked or terminated on or after January 1, 1991; persons who have been convicted of a violation of section 208 or section 1632 of the Social Security Act, persons convicted under other statutes in connection with services as a representative payee, and others whose certification as a representative payee SSA has revoked due to misuse of funds paid under Title II and Title XVI of the Social Security Act; persons who are acting or have acted as representative payees; representative payee applicants who were not selected to serve as representative payees; representative payee applicants who have been convicted of an offense resulting in more than one (1) year imprisonment; payees and payee applicants who have an outstanding felony warrant; organizational payees who have been authorized to collect a fee for their service; and beneficiaries/applicants who are being served by representative payees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consist of:

1. Names and Social Security numbers (SSNs) (or employer identification numbers (EINs)) of representative payees whose certifications for payment of benefits as representative payees have been revoked or terminated on or after January 1, 1991, because of misuse of benefits under Title II or Title XVI of the Social Security Act;

2. Names and SSNs (or EINs) of all persons convicted of violations of sections 208 or 1632 of the Social Security Act;

3. Names, addresses, and SSNs (or EINs) of persons convicted of violations of statutes other than sections 208 and 1632 of the Social Security Act, when such violations were committed in connection with the individual's service as a Social Security representative payee;

4. Names, addresses, SSNs, and information about the crime reported by the payee for those who have an outstanding felony warrant or who have been imprisoned for a period exceeding one (1) year. (An indicator will be used in the system to identify persons identified as having an outstanding felony warrant);

5. Names, addresses, and SSNs (or EINs) of representative payees who are receiving benefit payments pursuant to section 205(j) or section 1631(a)(2) of the Social Security Act;

6. Names, addresses, and SSNs of individuals for whom representative payees are reported to be providing representative payee services under section 205(j) or section 1631(a)(2) of the Social Security Act;

7. Names, addresses, and SSNs of representative payee applicants who were not selected as representative payees;

8. Names, addresses, and SSNs of persons who were terminated as representative payees for reasons other than misuse of benefits paid to them on behalf of beneficiaries/recipients;

9. Information on the representative payee's relationship to the beneficiaries/recipients they serve;

10. Names, addresses, EINs and qualifying information of organizations authorized to charge a fee for providing representative payee services;

11. Codes which indicate the relationship (other than familial) between the beneficiaries/recipients and the individuals who have custody of the beneficiaries/recipients;

12. Dates and reasons for payee terminations (*e.g.*, performance not acceptable, death of payee, beneficiary in direct payment, etc.) and revocations;

13. Codes indicating whether representative payee applicants were selected or not selected;

14. Dates and reasons representative payee applicants were not selected to serve as payees and dates and reasons for changes of payees (*e.g.*, beneficiary in direct payment, etc.);

15. Amount of benefits misused;

16. Identification number assigned to the claim on which the misuse occurred;

17. Date of the determination of misuse; and

18. Information about a felony conviction reported by the representative payee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a), 205(j), 1631(a) of the Social Security Act, and the Social Security Protection Act of 2004 (Pub. L. 108–203).

PURPOSE(S):

Information maintained in this system will assist SSA in the representative payee selection process by enabling Social Security field offices to more carefully screen applicants and to determine their suitability to become representative payees. SSA also will use the data for management information and workload projection purposes and to prepare annual reports to Congress on representative payee activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below. However, disclosure of any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when:

(a) The Social Security Administration (SSA), or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

Is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of the records.

3. To the General Services Administration and the National Archives Records Administration (NARA) under 44 U.S.C. § 2904 and § 2906, as amended by the NARA Act of 1984, information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

4. To the Department of Veterans Affairs, Regional Office, Manila, Philippines, for the administration of the Social Security Act in the Philippines and other parts of the Asia-Pacific region through services and facilities of that agency.

5. To the Department of State for administration of the Social Security Act in foreign countries through services and facilities of that agency.

6. To the American Institute, a private corporation under contract to the Department of State, for administering the Social Security Act on Taiwan through facilities and services of that agency.

7. To the Department of Justice for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) Representing the Commissioner of Social Security, and

(c) Investigating issues of fraud or violations of civil rights by officers or employees of the Social Security Administration.

8. To the Office of the President for responding to an inquiry received from that individual or from a third party acting on that individual's behalf.

9. To the Department of Veterans Affairs (DVA) for the shared administration of DVA's and the Social Security Administration's representative payee programs.

10. To contractors and other Federal Agencies, as necessary, for the purpose of assisting the Social Security Administration (SSA) in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

11. To a third party such as a physician, social worker, or community service worker, who has, or is expected to have, information which is needed to evaluate one or both of the following:

(a) The claimant's capability to manage or direct the management of his/her affairs.

(b) Any case in which disclosure aids investigation of suspected misuse of benefits, abuse or fraud, or is necessary for program integrity, or quality appraisal activities.

12. To a third party, where necessary, information pertaining to the identity of a payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identity of the beneficiary, to obtain information on employment, sources of income, criminal justice records, stability of residence and other information relating to the qualifications and suitability of representative payees or representative payee applicants to serve as representative payees or their use of the benefits paid to them under section 205(j) or section 1631(a) of the Social Security Act.

13. To a claimant or other individual authorized to act on his/her behalf information pertaining to the address of a representative payee applicant or a selected representative payee when this information is needed to pursue a claim for recovery of misapplied or misused benefits.

14. To the Railroad Retirement Board (RRB) for the administration of RRB's representative payment program.

15. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for the Social Security Administration (SSA), as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

16. To the Office of Personnel Management (OPM) for the administration of OPM's representative payee programs.

17. To the Secretary of Health and Human Services or to any State, any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in magnetic media (e.g., magnetic tape, microfilm, and disc) and manual forms.

RETRIEVABILITY:

Data are retrieved from the system by the SSN or the ZIP code and name (in a situation where the representative payee is an organization) of the representative payee, or the SSN of the beneficiary/recipient.

SAFEGUARDS:

For computerized records electronically transmitted between Central Office and FO locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm files are accessible only by authorized personnel who have a need for the information in performing their official duties. Magnetic tapes are in secured storage areas accessible only to authorized personnel. Access *http://www.socialsecurity.gov/foia/bluebook/app_g.htm* for additional information relating to SSA data security measures.

RETENTION AND DISPOSAL:

National Archives and Records Administration (NARA) guidelines will be followed for retention and disposal of records in the *Master Representative Payee File.* Changes are being made to the *Master Representative Payee File* to ensure NARA compliance. To prevent lost of data, back-up files are maintained on disk file cartridges and are destroyed after two weeks.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Income Security Programs, Social Security Administration, Room 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains data about him/her by writing to the systems manager at the address shown above and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of data in person should provide the same information, as well as provide any identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels information in the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth, along with one other piece of information, such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for access to records concerning another individual under false pretense is a criminal offense.

These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Also, a requester should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. Requester should also reasonably identify the record, specify the information they are contesting and the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

Data in this system are obtained from representative payee applicants and representative payees, the SSA Office of Inspector General, and other SSA systems of records such as the *Claims Folder System, 60–0089; Master Beneficiary Record, 60–0090; Supplemental Security Income Record and Special Veterans Benefits, 60–0103; Master Files of SSN Holders and SSN Applications, 60–0058; and Recovery of Overpayments, Accounting and Reporting, 60–0094.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E6–1319 Filed 1–31–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5289]

60-Day Notice of Proposed Information Collections: Notice of Termination of Diplomatic, Consular, or Foreign Government Employment, OMB No.1405–0061, Form DS–2008 & DS–2008E; Notification of Appointment of Foreign Diplomatic Officer, Career Consular Officer, and Foreign Government Employee, OMB No. 1405–0062, Form DS–2003, DS–2004, & DS–2003E; Notification of Appointment of Honorary Consular Officer, OMB No. 1405–0064, Form DS–2005; Notification of Change—Identification Card Request, OMB No. 1405–0089, DS–2006; Notification of Dependents of Diplomatic, Consular and Foreign Government Employees (Continuation Sheet), OMB No. 1405–0090, Form DS–2007

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Notice of Termination of Diplomatic, Consular, or Foreign Government Employment.

OMB Control Number: 1405–0061.

Type of Request: Extension of Currently Approved Collection.

Originating Office: Diplomatic Security/Office of Foreign Missions (DS/OFM/VTC/V).

Form Numbers: DS–2008 & DS–2008E.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 350 missions.

Estimated Number of Responses: 7,200 forms per year.

Average Hours per Response: 10 minutes.

Total Estimated Burden: 1,200 hours divided among the missions.

Frequency: On occasion.

Obligation to Respond: Mandatory.

Title of Information Collection: Notification of Appointment of Foreign Diplomatic, Career Consular Officer, and Foreign Government Employee.

OMB Control Number: 1405–0062.

Type of Request: Revision of Currently Approved Collection.

Originating Office: Diplomatic Security/Office of Foreign Missions (DS/OFM/VTC/V).

Form Numbers: DS–2003, DS–2004, & DS–2003E.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 350 missions.

Estimated Number of Responses: 7,000 forms per year

Average Hours per Response: 25 minutes.

Total Estimated Burden: 2917 hours divided among the missions.

Frequency: On occasion.

Obligation to Respond: Mandatory.

Title of Information Collection: Notification of Appointment of Honorary Consular Officer.

OMB Control Number: 1405–0064.

Type of Request: Extension of Currently Approved Collection.

Originating Office: Diplomatic Security/Office of Foreign Missions (DS/OFM/VTC/V).

Form Numbers: DS–2005 & DS–2005E.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 155 missions.

Estimated Number of Responses: 200 forms per year.

Average Hours per Response: 20 minutes.

Total Estimated Burden: 67 hours divided among the missions.

Frequency: On occasion.

Obligation to Respond: Mandatory.

Title of Information Collection: Notification of Change—Identification Card Request.

OMB Control Number: 1405–0089.

Type of Request: Extension of Currently Approved Collection.

Originating Office: Diplomatic Security/Office of Foreign Missions (DS/OFM/VTC/V).

Form Numbers: DS–2006.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 350 missions.

Estimated Number of Responses: 5,000 forms per year.

Average Hours per Response: 9 minutes.

Total Estimated Burden: 750 hours divided among the missions.

Frequency: On occasion.

Obligation to Respond: Mandatory.

Title of Information Collection: Notification of Dependents of Diplomatic, Consular, and Foreign Government Employees (Continuation Sheet).

OMB Control Number: 1405–0090.

Type of Request: Extension of Currently Approved Collection.

Originating Office: Diplomatic Security/Office of Foreign Missions (DS/OFM/VTC/V).

Form Numbers: DS–2007.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 350 missions.

Estimated Number of Responses: 7,000 forms per year.

Average Hours per Response: 10 minutes.

Total Estimated Burden: 1,167 hours divided among the missions.

Frequency: On occasion.

Obligation to Respond: Mandatory.

DATES: The Department will accept comments from the public up to 60 days from February 1, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- E-mail: *OFMCustomerService@state.gov.*
- Mail: U.S. Department of State, Office of Foreign Missions, Attn: Diplomatic Motor Vehicle Director, 3507 International Place, NW., State Annex 33, Washington, DC 20522–3302.

You must include the DS form number, information collection title, and OMB control number in any subject line of your correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for addition information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Attn: Jacqueline Robinson, Diplomatic Motor Vehicle Director, Office of Foreign Missions, 3507 International Place, NW., State Annex 33, Washington, DC 20522–3302, who may be reached at 202–895–3528 or *RobinsonJD@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collections: The forms associated with OMB numbers 1405–0061, 1405–0062, and 1405–0064 are the means by which the Department of State obtains information concerning the appointment and termination of foreign government employees and diplomatic, career and honorary consular officers serving in the United States. The DS–2007 (OMB number 1405–0090) is the means by which the Department of State obtains information to determine the acceptability of dependents and personal servants accompanying foreign government employees and diplomatic, career and honorary consular officers on tours in the United States. The DS–2006 (OMB number 1405–0089) is used to issue or make changes to identification cards and/or to update information previously submitted. These information collections instruments are used to extend or terminate privileges and immunities as is accorded under the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963, and to issue official identification cards and letters. The primary respondents are foreign government representatives.

Methodology: These forms/information collections are submitted by all foreign missions to the Office of Foreign Missions via the following methods: Mail, personal delivery, and/or electronically.

Dated: December 28, 2005.

John R. Arndt,

Acting Deputy Assistant Secretary, Bureau of Diplomatic Security, Office of Foreign Missions, Department of State.

[FR Doc. E6–1341 Filed 1–31–06; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 5291]

30-Day Notice of Proposed Information Collection: Form DS–86, Statement of Non-Receipt of a Passport, OMB Control Number 1405–0146

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Statement of Non-Receipt of A Passport.

OMB Control Number: 1405–0146.

Type of Request: Revision of the currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State, Passport Services, Office of Field Operations, Field Coordination Division. CA/PPT/FO/FC.

Form Number: DS–86.

Respondents: Individuals or Households.

Estimated Number of Respondents: 23,500.

Estimated Number of Responses: 23,500.

Average Hours per Response: 1/12 hr. (5 min.).

Total Estimated Burden: 2,000 hours annually.

Frequency: On occasion.

Obligation to Respond: Required to Obtain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 1, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov.*

You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

• Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Susan Cowlishaw, U.S. Department Of State, CA/PPT/FO/FC. 2100 Pennsylvania Avenue, NW., 3rd Floor/ Room 3040/ SA–29, Washington, DC 20037, who may be reached on 202.261.8957 or *Cowlishawsc@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Statement of Non-Receipt of A Passport, Form DS–86, is used by the U.S. Department of State to collect information for the purpose of issuing a replacement passport to customers who have not received the passport for which they originally applied.

The information is used by the Department of State to ensure that no person shall bear more than one valid or potentially valid U.S. passport at any one time, except as authorized by the Department, and is also used to combat passport fraud and misuse.

Methodology: Passport applicants who do not receive their passports are required to complete a Statement of Non-Receipt of A Passport, Form DS–86. Passport applicants can either download the form from the Internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and then submitted to the Acceptance Facility/Passport Agency for passport re-issuance.

Dated: January 12, 2006.

Frank Moss,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–1356 Filed 1–31–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5290]

60-Day Notice of Proposed Information Collection: DS–158, Contact Information and Work History for Nonimmigrant Visa Applicant, OMB Control Number 1405–0144

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** proceeding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Contact Information and Work History for Nonimmigrant Visa Applicant.

OMB Control Number: 1405–0144.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: CA/VO.

Form Number: DS–158.

Respondents: Applicants for F, J and M nonimmigrant visas.

Estimated Number of Respondents: 700,000 per year.

Estimated Number of Responses: 700,000 per year.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 700,000 hours per year.

Frequency: Once per respondent.

Obligation to Respond: Required to Obtain or Retain Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 1, 2006.

ADDRESSES: Interested parties are invited to submit written comments to the Chief, Legislation and Regulation Division, Visas Services—DS–158 Reauthorization, Department of State, Washington, DC 20520–30106. Comments may also be sent via e-mail to *VisaRegs@state.gov* or faxed to (202) 663–3898. The subject line of either an e-mail or fax must be: DS–158 Reauthorization.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, should be sent to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., L–603, Washington, DC 20522, who may be reached at (202) 663–1221.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: This form collects contact information, current employment information, and previous work experience information from aliens applying for certain nonimmigrant visas to enter the United States.

Methodology: Form DS–158 will be submitted in person or by mail or fax to U.S. embassies and consulates overseas. A version of the form without personal data is available online.

Dated: December 15, 2005.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–1357 Filed 1–31–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5288]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to Section 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR parts 120 to 130) on persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act (''AECA'') (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance,

Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to persons, or any party to the export, who have been convicted of violating certain statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary for Political-Military Affairs is authorized by § 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or other approval is required. This prohibition is referred to as ''statutory debarment.''

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment proceedings outlined in part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless licensing privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment, in accordance with Section 38(g)(4) of the AECA and § 127.11(b) of the ITAR. Any decision to grant reinstatement can be made only after the statutory requirements under Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-base basis at the discretion of the Assistant Secretary of State for Political-Military Affairs. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; Whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38 of the AECA and § 127.7 of the ITAR, the Assistant Secretary of State for Political-Military Affairs has statutorily debarred the following persons for a period of three years following the date of their AECA conviction:

(1) Bernardo Gonzalez-Martinez, October 24, 2003, U.S. District Court, Southern District of Texas (Brownsville), Case #: 1:03CR00455–003.

(2) Maria Silvia Elizalde de Nuñez, October 10, 2003, U.S. District Court, Southern District of Texas (Brownsville), Case #: 1:03CR00455–002.

(3) Kwonhwan Park (a.k.a. Howard Park), August 30, 2005, U.S. District Court, District of Connecticut (Bridgeport), Case #: 3:04cr123(MRK).

(4) Mehrdad Zar (a.k.a. Tony Zar), October 27, 1998, U.S. District Court, Eastern District of Virginia, Case #: 2:98CR00064–001.

(5) Constantinos Katsaras, November 25, 2003, U.S. District Court, Southern District of Florida (Ft. Lauderdale), Case #: 03–60096-Cr-Marra.

(6) Edgar Semprun, March 14, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 04–20605-CR-LENARD 004.

(7) Rafael Alberto Samper, February 28, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 04–20605-CR-LENARD 003.

(8) Antonio Tarrab, March 8, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 04–20605-CR-LENARD 005.

(9) Bilmer Alberto Paz, March 21, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 04–20605-CR-LENARD 006.

(10) Raul Demolina, May 5, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 04–20605-CR-LENARD(s).

(11) Sotaro Inami, April 28, 2005, U.S. District Court, Eastern District of Pennsylvania, Case #: 04–429.

(12) Luis Hector Margaillon-Drabos (a.k.a. Pedro Marquez-Monreal; a.k.a. Luis Hector Margaillon; a.k.a. Jose Olivarez-Martinez), April 18, 2005, U.S. District Court, District of Arizona (Tucson), Case #: CR 04–00208–001-PHX-FJM.

(13) Hemant Lakhani (a.k.a. Hemad Lakhani), September 12, 2005, U.S. District Court, District of New Jersey (Newark), Case #: 03–880–01.

(14) Interaero, Inc., December 16, 2004, U.S. District Court, District of Columbia, Case #: CR 04–317.

(15) Renald Etienne, December 17, 1999, U.S. District Court, Middle District of Florida (Tampa), Case #: 99–31-CR-FTM–26D.

(16) David Tomkins, October 8, 2004, U.S. District Court, Southern District of Florida (Miami), Case #: 94–204-CR-JORDAN.

(17) Tanzeem A. Khan, September 11, 2001, U.S. District Court, District of Maryland (Baltimore), Case #: JFM–01–085.

(18) Tauquir A. Khan, September 11, 2001, U.S. District Court, District of Maryland (Baltimore), Case #: JFM–01–085.

(19) Eduardo Marin Mejias, November 23, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 05–60128-CR-ALTONAGA.

(20) Neuro Enrique Gonzalez, November 8, 2005, U.S. District Court, Southern District of Florida (Miami), Case #: 05–60128-CR-ALTONAGA(s).

(21) Randy Reyes, January 14, 2000, U.S. District Court, Eastern District of Wisconsin, Case #: 98-CR–189.

(22) Fermin Revuelta, December 14, 2000, U.S. District Court, Northern District of California, Case #: CR–99–0117 CAL.

(23) Fernando Sero (a.k.a. Ferdie Resada), December 15, 2005, U.S. District Court, Southern District of New York, Case # 05 CR 00340–01 (CLB).

As noted above, at the end of the three-year period, the above named persons/entities remain debarred unless licensing privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.*, §§ 120.1(c) and (d), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person who has been convicted of violating or of conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and

International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR 127.7(d) and 128.13(a).

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: January 24, 2006.

John Hillen,

Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. E6–1339 Filed 1–31–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Hawaii Island Air, Inc. D/B/A Island Air for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2006–1–20), Docket OST–2005–22001.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Hawaii Island Air, Inc. d/b/a Island Air fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than February 8, 2006.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2005–22001 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Balgobin, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: January 25, 2006.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. E6–1321 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2005–21790]

Notice on the Essential Air Service Code-Sharing Pilot Program

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: Vision 100—Century of Aviation Reauthorization Act, Public Law 108–176, Title IV, subtitle A, section 406 requires the Secretary of Transportation to establish a pilot program, under which the Secretary would have discretion to require air carriers receiving Essential Air Service (EAS) subsidy and major carriers serving large hub airports to participate in code-sharing arrangements for up to 10 EAS communities. Public comments were invited about such a prospective program; all of the comments raised objections, particularly concerns that the Department would use the authority to force carriers to participate involuntarily in the program. This Notice discusses the comments, advises of the establishment of the pilot program, solicits applications for participation in the program, and specifies issues that should be addressed in such applications.

FOR FURTHER INFORMATION CONTACT: Kevin Schlemmer, U.S. Department of Transportation, Office of Aviation Analysis, 400 7th Street, SW., Washington, DC 20590. Telephone (202) 366–3176. E-mail: *kevin.schlemmer@dot.gov.*

SUPPLEMENTARY INFORMATION: The Essential Air Service program, established in 1978 by the Airline Deregulation Act, Public Law 95–504, enables small communities that were served by certificated air carriers before deregulation to maintain at least a minimal level of scheduled air service. Under this program, the Department currently provides subsidies to air carriers so that approximately 150 rural communities, including 37 in Alaska, can receive such service. DOT's program determines the minimum level of service at each community by specifying a hub through which the community is linked to the national transportation system, a minimum number of round trips and available seats that must be provided to that hub, certain characteristics of the aircraft to be used, and the maximum number of permissible intermediate stops to the hub.

A code-sharing agreement is a marketing arrangement between two carriers that allows one to publish schedules and sell tickets on flights operated by another. Typically, code-sharing allows carriers to broaden their network of destinations, to feed additional passengers to their hub airports, and to serve destinations that they could not otherwise serve on a profitable basis. Major airlines now commonly enter into voluntary code-share contracts with others, including smaller, regional carriers. Most airports covered under the EAS program have service provided by a carrier that has at least one major airline's code attached to its flights out of the airport. However, some carriers that provide subsidized service under the EAS program do not have any code-share arrangements in some of the markets that they serve.

On December 12, 2003, President Bush signed the Vision 100—Century of Aviation Reauthorization Act, Public Law 108–176. Title IV, subtitle A, section 406 of that statute required the Secretary of Transportation to establish a pilot program, under which the Secretary would have discretion to require air carriers receiving EAS subsidy and major carriers serving large hub airports to participate in code-sharing arrangements for up to 10 EAS communities. Section 406 provides as follows:

Code-Sharing Program

(a) In General.—The Secretary of Transportation shall establish a pilot program under which the Secretary may require air carriers providing air service with compensation under subchapter II of chapter 417 of title 49, United States code, and major carriers (as defined in section 41716(a)(2) of such title) serving large hub airports (as defined in section 40102 of such title) to participate in multiple code-sharing arrangements consistent with normal industry practice whenever and wherever the Secretary determines that such multiple

code-sharing arrangements would improve air transportation services.

Limitation.—The Secretary may not require air carriers to participate in the pilot program under this section for more than 10 communities receiving service under subchapter II of chapter 417 of title 49, United States Code.

On July 12, 2005, the Department solicited expressions of interest by air carriers regarding participation in the pilot program, suggestions as to how such a pilot program might be structured, and other comments concerning the practical aspects of mandating code-share arrangements. 70 FR 40098 (July 12, 2005).

Comments: We received comments from the Air Transport Association of America, Inc. (ATA), American Airlines, Inc. (American), The Boyd Group, Inc., Pacific Wings Airlines Limited (Pacific Wings), the Regional Airline Association (RAA), Southwest Airlines Co. (Southwest), and United Air Lines, Inc. (United).

All commenters objected in some manner to a mandated code-sharing program. Commenters also typically questioned the legal authority of DOT to enforce such a regulation, cited the apparent conflict of a mandated program with the laws and policies promoting deregulation of the airline industry, and asserted that carriers would experience substantial difficulties and costs in implementing such a program.

ATA, American, The Boyd Group, RAA, and Southwest all strongly opposed the mandatory aspect of participation in the program. ATA believed intrusive government involvement would seriously harm the dynamics of commercially viable code-share relationships. American, Southwest and The Boyd Group noted the considerable expense and close coordination required for code-share relationships even among willing participants. United stated that it desires to make its route decisions voluntarily and coordinate with EAS providers based on code-share relationships that strengthen its product and route network. Pacific Wings generally objected, but stated that it could support mandatory code-sharing in limited cases with certain restrictions in Hawaii, an area that the carrier serves. RAA noted that, while it is a strong supporter of the EAS program in general, it would prefer to see carriers enter into any program voluntarily.

A number of commenters questioned DOT's legal authority to mediate or intervene when code-share parties under any such program disagreed over the terms of the commitment. ATA asserted that such involvement would constitute a ''serious intrusion into the commercial processes through which code-share arrangements are established in the free market.'' Moreover, RAA contended that DOT does not have the operational or financial expertise to structure and administer such a program. American echoes this, arguing that such interference is antithetical to free enterprise. In a similar vein, Southwest maintained that compulsory code-sharing would be inconsistent with a deregulated industry and would require an unequivocal expression by Congress to re-regulate the industry before the Department should consider implementation. And United stated that DOT cannot force two independent carriers into a code-share agreement any more that it can force a carrier to enter an EAS market.

Difficulty and oversight of implementation are other concerns cited. In RAA's view, highly complicated issues are involved, among them the terms and conditions of contracts including liability for such matters as lost baggage and bumped passengers, coordination of schedules, passenger and freight pricing, allocation of airport facilities and staff, family assistance assignments, frequent flier programs, and revenue sharing. The Boyd Group and Southwest echo RAA in raising concerns as to the complexity of these issues. While Pacific Wings believed that DOT could help facilitate code-sharing by dealing with technological issues of real-time connections to the host's computer reservations system (CRS) to manage inventory, confirm reservations, and reaccommodate passengers, United points to a more practical matter: it has a shortage of 4 digit flight numbers and the company already has to sacrifice certain code-share markets due to the technological problem of flight number shortages.

Several commenters questioned the potential effectiveness of any such program. The Boyd Group says that, before this program is implemented, the entire EAS program should first be reevaluated and updated to adjust to the air transportation system that has changed considerably since the industry was deregulated in 1978. It stated that while code-sharing would appear to boost traffic at EAS communities, it does not in fact necessarily do this. RAA further expressed doubt whether a mandatory code-share program would increase enplanements, especially where there is a major airport within reasonable driving distance.

American, Southwest, and RAA further noted that the plain language used in the statute specifies only that the Secretary ''may'' require air carriers to participate. Southwest argued that this plain language does not mandate that DOT require major carrier participation. American urged that, during a time of unprecedented distress in the industry, the DOT should not harm major carriers by imposing ''substantial non-recoverable costs'' that this program would entail. It stated that, should DOT err and implement this program, several limitations should be imposed, including limiting the display of the major carrier's code on flights operated by the EAS carrier between the EAS point and the large hub airport, limiting the mandated code sharing to one EAS route per major carrier, and not entering into agreement with any EAS carrier unless it has been in operation for at least five years. It also would have the Department require that any EAS partner have compatible systems interfaces with the major carrier (including electronic ticketing capability), and be a full participant in the Airline Reporting Corporation (ARC) before the EAS carrier could apply for a mandatory code-share agreement. American further proposed that all implementation and recurring expenses be borne by the EAS carrier.

Decision: We generally agree with the commenters that requiring code-sharing between unwilling partners would raise serious policy and practical issues. From a policy standpoint, we acknowledge that requiring and enforcing involuntary code-sharing would intrude on carrier management of rates, routes, and services in a manner that is, at a minimum, inconsistent with the basic thrust of the Airline Deregulation Act of 1978 and its implementing Federal policies. From a practical standpoint, even if we were inclined to require code-sharing, the implementation problems would be difficult, if not impossible, to overcome. Under a voluntary arrangement, the major carrier could work with the EAS carrier to delineate the specific details of revenue sharing arrangements and technical considerations within the scope of their business plans and methods. However, because major airlines are under considerable pressure to control costs, when they devote valuable and sometimes scarce resources (such as planning staff, gate agents, and ramp space) they should be confident that there would be a positive revenue outcome for each carrier. Compelling a carrier to enter into an arrangement may cause financial losses. Gate space at hub airports for small aircraft is a concern, as some airlines

have no room for additional aircraft at their existing gates. Some airports now require aircraft parked on certain gates to have a minimum amount of seats and, generally, the EAS carriers would not meet that requirement.

Nonetheless, under some circumstances, code-sharing can make EAS more attractive to customers, increasing traffic and reducing subsidy costs. We agree that carriers should be encouraged to expand code-sharing to small and underserved communities, and look to whether the obstacles some perceive can be overcome. While we find the comments highly persuasive, we are unwilling to state categorically that there are no circumstances where mandatory code-sharing might work. Therefore, we will fulfill our statutory obligation to establish a program, and in doing so encourage any carrier interested in participating in it to submit an application in the context of particular communities or goals. In doing so, however, an applicant should address why its proposal should be implemented in a manner in which the various objections discussed above can be resolved or minimized. If it has a particular code-share partner in mind, it should address any specific objections that carrier has to participating with it in a code-share relationship. This program is limited to subsidized EAS communities. Proposals should be thorough, with a well-laid out plan why the proposed arrangement would be beneficial to the community and the carriers involved. Applicants that do not satisfactorily address the concerns that we have outlined in this Notice, and the concerns of the partner(s) with which it wishes to establish a code-share relationship, should expect to have their applications rejected. Applicants should file any such applications in Docket No. OST–2005–21790.

Issued in Washington, DC on January 26, 2006.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. E6–1322 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City and County of Los Angeles, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) and Environmental Impact (EIR) will be prepared for a project in Los Angeles, California, known as the State Route (SR) 90/Admiralty Way Improvements Project.

FOR FURTHER INFORMATION CONTACT: Steve Healow, Federal Highway Administration, 650 Capitol Mall Suite 4–100, Sacramento, Calfironia 94814, Telephone: (916) 498–5849 or Dominic Osmena, Project Manager, L.A. County Public Works, 900 South Fremont Avenue, Alhambra, California 91803, Telephone: (626) 458–5912.

SUPPLEMENTARY INFORMATION: The FHWA is issuing this notice to advise the public that an EIS will be prepared for proposed improvements to the roadway system in Los Angeles County, California.

The study area is in the northwest, north and east quadrants of Marina del Rey, a County-owned and operated tidal marina, which connects to Santa Monica Bay. The approximate study area boundaries are Via Marina/Admiralty Way intersection on the West, Admiralty Way on the northwest and west, SR 90 on the northeast, Mindanao Way on the east and Fiji Way on the south.

The proposed improvements will extend SR90 to create a direct route into Marina del Rey, and improvements to Admiralty Way. The proposed project consists of two components: the SR 90 (Marina Expressway) Connector Road, and Admiralty Way Improvements. The SR 90 Connector Road consists of realignment of approximately 1,250 feet of SR 90 between Mindanao Way and SR 1 (Lincoln Boulevard), and construction of a connector road between SR 1 and Admiralty Way. Alternatives under consideration include (1) taking no action; (2) the Northern Alternative realignment of SR 90; (3) the Basin F realignment of SR 90; and (4) the Bali Way realignment of SR 90. The Admiralty Way Improvements component includes proposed improvements to intersections, lane configurations, and/or land widths along 8,450 feet of Admiralty Way between Fiji Way and Via Marina. Alternatives under consideration include (1) taking no action; (2) five lane re-striping; (3) five/six land widening; (4) reconfigure Via Marina/Admiralty Way intersection, and (5) pedestrian enhancements. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment. Property acquisitions and utility relocations may be necessary. Transportation Systems Management (TSM)/Transportation Demand Management (TDM) alternatives will also be considered.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the contacts provided above. Key environmental issues to be studied include, but are not limited to, air quality, noise, traffic, socioeconomic impacts, business relocations, hazardous materials, biological, water quality, coastal zone, flood plains, wetlands, visual impacts, impacts to open space and cultural resources and parking. Other key issues may arise at the scoping meeting or during the environmental review process. Resources subject to Section 106 of the National Historic Preservation Act may be affected. Section 4(f) resources may also be affected. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed, or are known to have an interest in, this proposal.

The public is invited to participate in a scoping meeting(s) on March 9, 2006 at 7 p.m. and on March 18, 2006 at 10:30 a.m. at the Burton Chace Park Community Room, 13650 Mindanao Way, Marina del Rey. The purpose of the scoping meeting(s) is to seek input and to collect ideas and concerns regarding (1) the individual project concepts and (2) the environmental studies to be done. The draft EIS will be available for public and agency review prior to the public hearing.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 23, 2006.

Steve Healow,

Federal Highway Administration, Sacramento, California.

[FR Doc. 06–924 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Iron County, UT

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of termination.

SUMMARY: The FHWA is issuing this notice to advise the public that the effort to prepare an Environmental Impact Statement (EIS) for transportation improvements to Cross Hollow Road, from I–15 to SR–56, located in Cedar City, Utah, will be terminated.

FOR FURTHER INFORMATION CONTACT: Sandra A. Garcia-Aline, Transportation Engineer, FHWA, Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone (801) 963–0182; or Daryl Friant, Utah Department of Transportation (UDOT), 1345 South 350 West, Richfield, UT 84701, Telephone (435) 893–4714.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the UDOT and Cedar City have elected to terminate efforts to prepare an EIS for transportation improvements on Cross Hollow Road between I–15 and SR–56. The Notice of Intent for this project was originally published on March 10, 2005. Cedar City has recently elected not to use federal funds on the project. Therefore, no federal funds or federal action will be required for the revised project. The FHWA, in conjunction with the Utah Department of Transportation, has decided to discontinue efforts on this project. If you have any questions regarding the revised Cross Hollow Road project or would like to provide scoping comments, please contact Tamerha Maxwell, UDOT Project Manager, at (435) 865–5511.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Sandra A. Garcia-Aline,

NEPA Manager, Federal Highway Administration, Salt Lake, Utah.

[FR Doc. 06–923 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project which would relocate U.S. 33 from Haydenville in Hocking County to Doanville in Athens County in the State of Ohio. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 31, 2006. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. David Snyder, P.E., Environmental Program Manager, Federal Highway Administration, 200 North High Street, Columbus, Ohio, 43215; telephone: (614) 280–6852; e-mail: *David.Snyder@fhwa.dot.gov;* FHWA Ohio Division Office's normal business hours are 8 a.m. to 4:30 p.m. (eastern time). You may also contact Mr. Tim Hill, Ohio Department of Transportation, 1980 West Broad Street, Columbus, OH 43223; telephone: (624) 644–0377.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Ohio: U.S. Route 33, from Haydenville in Hocking County to Doanville in Athens County in the State of Ohio. The project will be a 9 mile long, four-lane divided controlled access highway on new location, also known as the Nelsonville Bypass Project. It will begin northwest of Nelsonville adjacent to Haydenville. It will then proceed in a northeasterly direction north of Nelsonville and south of Buchtel. It will end at Doanville which is located just northwest of New Floodwood, tying back into the existing 4-lane divided U.S. Route 33 approximately 1.2 miles east of SR691. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on June 30, 2005, in the FHWA Record of Decision (ROD) issued on August 19, 2005, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Ohio Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed at the Nelsonville Public Library, the Athens and Hocking County Engineer's offices, the Athens and Hocking County Commissioners' offices, the Nelsonville City Manager's office, and the Hocking College President's office.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).
3. Land: Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), [23 U.S.C. 319]; National Forest Management Act (NFMA) of 1976 [16 U.S.C. 1600–1614].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. Wetlands and Water Resources: Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C.

1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: January 25, 2006.

Dennis A. Decker,

Division Administrator, Columbus, Ohio.

[FR Doc. E6–1312 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22970; Notice 2]

Les Entreprises Michel Corbeil Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Les Entreprises Michel Corbeil Inc. (Corbeil) has determined that certain school buses that it produced in 2004 do not comply with S5.1 of 49 CFR 571.221, Federal Motor Vehicle Safety Standard (FMVSS) No. 221, ''School bus body joint strength.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Corbeil 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 the petition was published, with a 30 day comment period, on November 23, 2005 in the **Federal Register** (70 FR 70914). NHTSA received no comments.

Affected are a total of approximately 295 school buses produced between May 3, 2004 and June 4, 2004. S5.1 of FMVSS No. 221 requires that:

> * * * each body panel joint * * * when tested in accordance with the procedure of S6, shall hold the body panel to the member to which it is joined when subjected to a force of 60 percent of the tensile strength of the weakest joined body panel determined pursuant to S6.2.

The longitudinal roof joint on some of the subject school buses fails when tested according to the requirements of S5.1.

Corbeil believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Corbeil states that during the period of production of the subject school buses, ''the production used expired glue.'' Corbeil estimates that 61 of the 295 buses could be affected, based on the number of expired glue cartridges that were used.

Corbeil further states:

> * * * repairs could affect the structural integrity of these buses' roofs. If we proceed with repairs, we must remove the actual MS polymer strips on the roof to reach the joints. This operation requires us to preheat (300–600 °F) the MS polymer strip (will soften the MS polymer) but at the same time will cause a significant urethane chemical modification and will affect the actual joint strength. The roof joint is composed of urethane glue and this glue will be affected if the temperature is higher than 194 °F * * *. If our educated estimate is that only 61 buses on (sic) the 295 buses involved in this recall are affected, however they cannot be individually identified. Also, during the test, the transverse joint succeeded at 116% of the requirement and the longitudinal joint failed only by 9% with 91% of the requirement. The objective of this recall is to increase the strength of the joint. We presently suspect that a retrofit could affect/damage the roof rather to (sic) reinforce the joint.

Corbeil states that no accidents or injuries have occurred as a result of this noncompliance.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety.

With respect to the margin of noncompliance, Corbeil argues that the failing school bus joint reached 91 percent of the load required by the standard. In the petitioner's opinion, not meeting the requirement by 9 percent of the required load is inconsequential to motor vehicle safety. The agency disagrees. A significant injury-producing characteristic of school bus crashes is exposure to sharp metal edges that occurs when body panels become separated from the structural components to which they have been fastened. In a crash, severe lacerations may result if the occupants of the bus are tossed against these edges. Moreover, if panel separation is extensive, the occupant may be ejected from the vehicle, significantly increasing the possibility of serious injury. This standard is intended to reduce the likelihood of this type of injury by requiring that body joints on school buses have a minimum tensile strength equal to 60 percent of the tensile strength of the weakest joined body panel. Therefore, NHTSA believes that failure to meet the performance requirements of the standard is directly consequential to the safety of our school children.

With respect to the number of vehicles that are noncompliant, Corbeil states that it believes only 61 of the 295 school buses of the model tested by the agency are noncompliant. However, 49 U.S.C. 30112 prohibits the manufacturing, selling and importing of any noncompliant vehicles. The FMVSSs are designed to afford equal protection to all who use these vehicles, and therefore the number of noncompliant vehicles is not relevant to the effect on safety.

Corbeil also states that it suspects that its proposed remedy could compromise the integrity of the roof joints due to the heating required to remove the sealant. If Corbeil's proposed repair remedy would actually further weaken the school bus body joints, and therefore result in the vehicles still not meeting the requirements of FMVSS No. 221, it would not be an acceptable remedy under the statute. 49 U.S.C. 30120(a) requires that a manufacturer remedy a noncompliance by either repairing, replacing or repurchasing the noncompliant vehicle.

However, we think that Corbeil's concerns about the one repair method it suggests are misplaced. The agency is aware of several cases where school bus manufacturers have brought similar noncompliant vehicles with inadequate body joint strength into compliance with FMVSS No. 221 by the addition of mechanical fasteners. In these cases, the additional fasteners brought the vehicles into compliance without reliance upon any other fastening method, such as adhesive. Corbeil is responsible for determining an appropriate remedy for the noncompliance. However, as discussed, other options may be available that remedy the noncompliance without compromising the integrity of the structure. In any event, Corbeil's proposed remedy is not relevant to determining whether or not the noncompliance is consequential to safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion

that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Corbeil's petition is hereby denied.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.)

Issued on: January 27, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–1373 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22971; Notice 2]

Weekend Warrior Trailers, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Weekend Warrior Trailers, Inc. (Weekend Warrior) has determined that certain ramp-equipped travel trailers that it produced in 2001 through 2005 do not comply with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Weekend Warrior 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 the petition was published, with a 30 day comment period, on November 23, 2005 in the **Federal Register** (70 FR 70915). NHTSA received one comment.

Affected are a total of approximately 13,447 ramp-equipped travel trailers produced between January 2001 and September 2005. FMVSS No. 108 requires that these vehicles be equipped with amber intermediate side marker lamps and reflex reflectors, and red identification lamps. However, the subject vehicles are not equipped with these devices.

Weekend Warrior believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Weekend Warrior states that the noncompliance has caused no safety related accidents or injuries, and that it has received no customer complaints or notification of injuries or deaths related to the absence of the required items.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety.

Weekend Warrior did not equip the subject trailers with identification lamps, intermediate side reflex reflectors, or intermediate side marker lamps, all of which have been required on large trailers since January 1, 1969. The ability of motorists to distinguish large trucks and trailers from passenger vehicles is an essential component of crash avoidance because of size, maneuvering, and speed differences between the two types of vehicles. High mounted identification lamps uniquely identify large vehicles and do so with the longest possible sight preview of the lamps. Intermediate side marker lamps and reflex reflectors provide additional marking to notify oncoming drivers of the presence of a long vehicle and one across the roadway.

The agency received one comment from FMVSS Consulting, which supported denial of this petition, based on the safety need for enhanced lighting and conspicuity materials which, the commenter states, are needed because ''[t]railers need abundant conspicuity at night to meet the need for safety.'' NHTSA agrees.

A review of NHTSA's research report ''An Analysis of Fatal Large Truck Crashes'' (DOT HS 809 569) indicates that 7,026 passenger vehicle drivers died as a result of crashes with combination trucks (*i.e.*, trucks pulling trailers) from 1996 through 1999. Of those, 11 percent were rear end collisions with the passenger vehicle striking the combination truck, 13 percent were sideswipes where the passenger vehicle encroached, and 5 percent were related to trucks turning across the path of the passenger vehicle. NHTSA believes that commercial vehicle conspicuity may have been a factor in many of these crashes. Therefore, NHTSA concludes that the manufacturer's installation of these components, as required by FMVSS No. 108, is critical for motor vehicle safety.

Weekend Warrior notes that it has not received any complaints or reports of injury as a result of the missing equipment. The agency does not consider the company's having not received such complaints or reports to be compelling evidence of the inconsequentiality of this noncompliance to safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Weekend Warrior's petition is hereby denied.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.)

Issued on: Janaury 27, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–1372 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Thompson Hine and McCarthy, Sweeney & Harkaway on behalf of the State of North Dakota (WB456–1—1/25/2006) for access to certain data from the Board's 2000–2004 Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6–1329 Filed 1–31–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 26, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 3, 2006 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0029.

Type of Review: Revision.

Title: Suspicious Activity Report by Insurance Companies.

Form: FinCEN form 108.

Description: 31 CFR 103.16 requires insurance companies to report suspicious activities to the Financial Crimes Enforcement Network. FinCEN form 108 is an aid to this required reporting providing the filer with a guide in completing this reporting requirement.

Respondents: Business or other for-profit.

Estimated Total Reporting Burden: 14,400 hours.

Clearance Officer: Russell Stephenson, (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–1334 Filed 1–31–06; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Recordkeeping Requirements for Securities Transactions—12 CFR part 12.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit comments by March 3, 2006.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0142, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0142, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR part 12.

OMB Number: 1557–0142.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The only revisions to the submission are the revised estimates, which have been updated for accuracy.

The information collection requirements in 12 CFR part 12 are required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure compliance with banking and securities laws and regulations. The OCC uses the required information in its examinations to, among other things, evaluate a bank's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR part 12 are as follows: Section 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Section 12.4 requires a national bank to give or send to the customer a written notification of transaction or a copy of the registered broker/dealer confirmation relating to the securities transaction.

Sections 12.5(a), (b), (c), and (e) allow national banks, as an alternative to complying with § 12.4, to elect to provide alternative forms of notification to customers for certain transactions in accounts in which the bank does not exercise investment discretion, trust transactions, agency transactions and periodic plan transactions.

Sections 12.7(a)(1) through (a)(3) require a national bank to develop and maintain written securities trading policies and procedures.

Section 12.7(a)(4) requires bank officers and employees to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest, if certain conditions are met.

Section 12.8 requires a national bank to file a written request with the OCC for a waiver of one or more of the requirements set forth in §§ 12.2 through 12.7.

On November 25, 2005, the OCC published in the **Federal Register** (70 FR 71189) a notice concerning the renewal of this information collection. The OCC received no public comments and is now submitting its request to OMB for approval.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 585.

Estimated Total Annual Responses: 2,369.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,207 hours.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 25, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E6–1221 Filed 1–31–06; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–17–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–17–90 (TD 8571), Reporting Requirements for Recipients of Points Paid on Residential Mortgages (§§ 1.6050H–1 and 1.6050H–2).

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622–3634, Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

OMB Number: 1545–1380.

Regulation Project Number: IA–17–90.

Abstract: These regulations require the reporting of certain information relating to payments of mortgage interest. Taxpayers must separately state on Form 1098 the amount of points and the amount of interest (other than points) received during the taxable year on a single mortgage and must provide to the payer of the points a separate statement setting forth the information being reported to the IRS.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 37,644.

Estimated Time Per Respondent: 7 hrs., 31 minutes.

Estimated Total Annual Burden Hours: 283,056.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1228 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule F, Part I and II (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule F, Part I and II (Form 1040), Profit or Loss From Farming.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Profit or Loss From Farming.

OMB Number: 1545–1975.

Form Number: Schedule F, Part I and II (Form 1040).

Abstract: Schedule F, Part I and II (Form 1040) is used by individuals to report their Farm Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farming.

Estimated Number of Respondents: 1,323,640.

Estimated Time Per Respondent: 5 hours 53 minutes.

Estimated Total Annual Burden Hours: 7,796,240.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1229 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–ESA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498–ESA, Coverdell ESA Contribution Information.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Coverdell ESA Contribution Information.

OMB Number: 1545–1815.

Form Number: 5498–ESA.

Abstract: Form 5498–ESA is used by trustees or issuers of Coverdell Education Savings accounts to report contributions and rollovers to these accounts to beneficiaries.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization.

Estimated Number of Responses: 150,000.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Burden Hours: 18,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1230 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8881

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8881, Credit for Small Employer Pension Plan Startup Costs.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Small Employer Pension Plan Startup Costs.

OMB Number: 1545–1810.

Form Number: 8881.

Abstract: Qualified small employers use Form 8881 to request a credit for

start up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement-related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 66,667.

Estimated Time Per Respondent: 7 hours, 54 minutes.

Estimated Total Annual Burden Hours: 526,670.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 20, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1231 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 96–60

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–60, Procedure for filing Forms W–2 in certain acquisitions.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Procedure for filing Forms W–2 in certain acquistions.

OMB Number: 1545–1510.

Revenue Procedure Number: Revenue Procedure 96–60.

Abstract: The information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Internal Revenue Code sections 6051 and 6011 for Forms W–2 and 941.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 553,500.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 110,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1232 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–22, 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2006.

Glenn P. Kirkland,

RS Reports Clearance Officer.

[FR Doc. E6–1233 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106871–00 (Final)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–106871–00 (Final), Reporting Requirements for Widely Held Fixed Investment Trusts (§ 1.671–5).

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Widely Held Fixed Investment Trusts.

OMB Number: 1545–1540.

Regulation Project Number: REG–106871–00 (Final).

Abstract: Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1244 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–26–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–26–96 (TD 8825), Regulations Under section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups (§ 1.382–8).

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96.

Abstract: Internal Revenue Code section 382 limits the amount of income that can be offset by loss carryovers after an ownership change in a loss corporation. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups of corporations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 875.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1245 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule H (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule H (Form 1040), Household Employment Taxes.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Household Employment Taxes.

OMB Number: 1545–1971.

Form Number: Schedule H (Form 1040).

Abstract: Schedule H (Form 1040) is used by individuals to report their employment taxes. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously

approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 19,814.

Estimated Time Per Respondent: 3 hours 38 minutes.

Estimated Total Annual Burden Hours: 71,925.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1266 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–47, Employee Plans Compliance Resolution System.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Compliance Resolution System.

OMB Number: 1545–1673.

Revenue Procedure Number: Revenue Procedure 2002–47.

Abstract: The information requested in Revenue Procedure 2002–47 is required to enable the Internal Revenue Service to make determinations regarding the issuance of various types of closing agreements and compliance statements. The issuance of closing agreements and compliance statements allows individual plans to continue to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 4,292.

Estimated Time Per Respondent: 13 hours, 6 minutes.

Estimated Total Annual Burden Hours: 56,272.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1267 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–7–94; FI–36–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing

final regulations, FI–7–94 (TD 8718; TD 8538) and FI–36–92 (TD 8476), Arbitrage Restrictions on Tax-Exempt Bonds (Sections 1.148–2, 1.148–3, 1.148–4, 1.148–7, and 1.148–11).

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1347.

Regulation Project Numbers: FI–36–92; FI–7–94.

Abstract: Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Under FI–36–92, issuers are required to file a Form 8038–T and remit the rebate.

Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under FI–7–94, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 3,100.

Estimated Time per Respondent: 14 hr., 34 min.

Estimated Total Annual Burden Hours: 42,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 18, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1278 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule E (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule E (Form 1040), Supplemental Income and Loss.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Supplemental Income and Loss.

OMB Number: 1545–1972.

Form Number: Schedule E (Form 1040).

Abstract: Schedule E (Form 1040) is used by individuals to report their Supplemental Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 45,463.

Estimated Time Per Respondent: 6 hours 16 minutes.

Estimated Total Annual Burden Hours: 284,599.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1280 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule C–EZ (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule C–EZ (Form 1040), Net Profit From Business.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Net Profit From Business.

OMB Number: 1545–1973.

Form Number: Schedule C–EZ (Form 1040).

Abstract: Schedule C–EZ (Form 1040) is used by individuals to report their Business Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 587,151.

Estimated Time Per Respondent: 1 hour 45 minutes.

Estimated Total Annual Burden Hours: 1,027,515.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1281 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule C (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule C (Form 1040), Profit or Loss From Business.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Profit or Loss From Business.

OMB Number: 1545–1974.

Form Number: Schedule C (Form 1040).

Abstract: Schedule C (Form 1040) is used by individuals to report their Business Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 10,000,236.

Estimated Time per Respondent: 10 hours 22 minutes.

Estimated Total Annual Burden Hours: 103,702,448.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally,

tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1282 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8832

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8832, Entity Classification Election.

DATES: Written comments should be received on or before April 3, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Entity Classification Election.

OMB Number: 1545–1516.

Form Number: Form 8832.

Abstract: An eligible entity that chooses not to be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect a classification.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 4 hours 20 minutes.

Estimated Total Annual Burden Hours: 21,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1283 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Schedule F, Part II and III (Form 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Schedule F, Part II and III (Form 1040), Profit or Loss From Farming.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Profit or Loss From Farming.

OMB Number: 1545–1976.

Form Number: Schedule F, Part II and III (Form 1040).

Abstract: Schedule F, Part II and III (Form 1040) is used by individuals to report their Farm Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farming.

Estimated Number of Respondents: 8,495.

Estimated Time Per Respondent: 5 hours 49 minutes.

Estimated Total Annual Burden Hours: 49,356.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1284 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–105–75]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–105–75 (TD 8348), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (Section 1.613A–3(l)).

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75.

Abstract: Section 1.613A–3(1) of the regulation requires each partner to separately keep records of his or her share of the adjusted basis of partnership oil and gas property and requires each partnership, trust, estate, and operator to provide to certain persons the information necessary to compute depletion with respect to oil or gas.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden associated with this collection of information is reflected on Forms 1065, 1041, and 706.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1285 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–74–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–74–93, (TD 8623), Substantiation Requirement for Certain Contributions (§ 1.170A–13).

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue

Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC, 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Substantiation Requirement for Certain Contributions.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 (Final).

Abstract: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include de minimis goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and non-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Time Per Respondent: 3 hours, 13 minutes.

Estimated Total Annual Burden Hours: 51,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 18, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1287 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–50

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–50, Combined Information Reporting.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Combined Information Reporting.

OMB Number: 1545–1667.

Revenue Procedure Number: Revenue Procedure 99–50.

Abstract: Revenue Procedure 99–50 permits combined information reporting by a successor business entity (*i.e.*, a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. Combined information reporting may be elected by a successor with respect to certain Forms 1042–S, all forms in the series 1098, 1099, and 5498, and Forms W–2G. The successor must file a statement with the IRS indicating what forms are being filed on a combined basis.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 6,000.

Estimated Average Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1288 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 6559 and 6559–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6559, Transmitter Report and Summary of Magnetic Media and Form 6559–A, Continuation Sheet for Form 6559.

DATES: Written comments should be received on or before April 3, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Transmitter Report and Summary of Magnetic Media (Form 6559) and Continuation Sheet for Form 6559 (Form 6559–A).

OMB Number: 1545–0441.

Form Numbers: 6559 and 6559–A.

Abstract: Forms 6559 and 6559–A are used by filers of Form W–2 Wage and Tax Data to transmit filings on magnetic media. SSA and IRS need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 90,000.

Estimated Time per Respondent: 18 min.

Estimated Total Annual Burden Hours: 27,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–1289 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of determination of necessity for renewal of the Art Advisory Panel.

SUMMARY: It is in the public interest to continue the existence of the Art Advisory Panel. The current charter of the Art Advisory Panel will be renewed for a period of two years.

FOR FURTHER INFORMATION CONTACT: Karen E. Carolan, AP:ART, 1099 14th Street, NW., Room 4200E, Washington, DC 20005, Telephone No. (202) 435–5609 (not a toll free number).

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1982), the Commissioner of Internal Revenue announces the renewal of the following advisory committee:

Title. The Art Advisory Panel of the Commissioner of Internal Revenue.

Purpose. The Panel assists the Internal Revenue Service by reviewing and evaluating the acceptability of property appraisals submitted by taxpayers in support of the fair market value claimed on works of art involved in Federal Income, Estate or Gift taxes in accordance with sections 170, 2031, and 2512 of the Internal Revenue Code of 1986.

In order for the Panel to perform this function, Panel records and discussions must include tax return information. Therefore, the Panel meetings will be closed to the public since all portions of the meetings will concern matters that are exempted from disclosure under the provisions of section 552b(c)(3), (4), (6) and (7) of Title 5 of the U.S. Code. This determination, which is in accordance with section 10(d) of the Federal Advisory Committee Act, is necessary to protect the confidentiality of tax returns and return information as required by section 6103 of the Internal Revenue code.

Statement of Public Interest. It is in the public interest to continue the existence of the Art Advisory Panel. The Secretary of Treasury, with the concurrence of the General Services Administration, has also approved renewal of the Panel. The membership of the Panel is balanced between museum directors and curators, art dealers and auction representatives to afford differing points of view in determining fair market value.

Authority for this Panel will expire two years from the date the Charter is approved by the Assistant Secretary for Management and Chief Financial Officer and filed with the appropriate congressional committees unless, prior to the expiration of its Charter, the Panel is renewed.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is

not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Mark W. Everson,

Commissioner of Internal Revenue.

[FR Doc. E6–1234 Filed 1–31–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
February 1, 2006

Part II

Environmental Protection Agency

40 CFR Parts 86 and 600

Fuel Economy Labeling of Motor Vehicles: Revisions To Improve Calculation of Fuel Economy Estimates; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[EPA–HQ–OAR–2005–0169; FRL–8021–8]

RIN 2060–AN14

Fuel Economy Labeling of Motor Vehicles: Revisions To Improve Calculation of Fuel Economy Estimates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing changes to the test methods used to calculate the fuel economy estimates that are posted on window stickers of all new cars and light trucks sold in the United States. A fundamental issue with today's fuel economy estimates is that the underlying test procedures do not fully represent real-world driving conditions. Although no single test or set of tests can ever account for the wide variety of conditions experienced by every driver, the new fuel economy estimates would more accurately reflect a number of important factors that drivers are likely to experience on the road. These changes will take effect starting with 2008 model year vehicles. Under the new methods, the City MPG estimates for most vehicles would drop 10 percent to 20 percent from today's labels, depending on the vehicle. The Highway MPG estimates would generally drop 5 percent to 15 percent for most vehicles. Although today's proposed fuel economy test methods would provide more accurate estimates for many consumers, there will always continue to be drivers who get higher or lower fuel economy than the window sticker numbers. Currently the same test procedures are used for both the window sticker estimates and the fuel economy values used to determine a manufacturer's corporate average fuel economy (CAFE). However, this proposal would not alter the test procedures, driving cycles, measurement techniques, or the calculation methods used to determine CAFE.

DATES: *Comments:* Comments must be received on or before April 3, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before March 3, 2006. See Section VII.A of the **SUPPLEMENTARY INFORMATION** section for more information about written comments.

Hearings: We will hold a public hearing in Romulus, Michigan, on March 3, 2006. See Section VII.C of the **SUPPLEMENTARY INFORMATION** section for more information about public hearings.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0169, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Fax: (202) 566–1741.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2005–0169. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''
- Hand Delivery: Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2005–0169. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0169. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section VII of the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing: The public hearing will be at the Crowne Plaza Hotel, Detroit—Metro Airport, 8000 Merriman Road, Romulus, Michigan.

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

FOR FURTHER INFORMATION CONTACT: Rob French, U.S. EPA, Voice-mail (734) 214–4636; E-mail: *french.roberts@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed action would affect companies that manufacture or sell new light-duty motor vehicles. Regulated categories and entities include:

Category	NAICS codes [A]	Examples of potentially regulated entities
Industry	336111, 336112	Motor vehicle manufacturers.
Industry	811112, 811198, 541514	Commercial Importers of Vehicles and Vehicle Components.

[A] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, you should carefully examine the proposed regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT.**

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I. Introduction

The EPA fuel economy estimates have appeared on the window stickers of all new cars and light trucks since the late 1970's and are well-recognized by consumers. The fuel economy estimates essentially serve two purposes: to provide consumers with a basis on which to compare the fuel economy of different vehicles, and to provide consumers with a reasonable estimate of the range of fuel economy they can expect to achieve. While the estimates historically have been a valuable tool for comparison shopping purposes, attention has been focused recently on how closely the EPA estimates approximate consumers' real-world fuel economy experience.

Today, we are proposing changes to EPA's fuel economy test methods to bring the estimates closer to the fuel economy consumers are achieving in the real-world. We believe these estimates will provide car buyers with useful information when comparing the fuel economy of different vehicles. It is important to emphasize that fuel economy varies from driver to driver for a wide variety of reasons, such as different driving styles, climates, traffic patterns, use of accessories, loads, weather, and vehicle maintenance. Even different drivers of the same vehicle will experience different fuel economy as these and other factors vary. Therefore, it is impossible to design a ''perfect'' fuel economy test that will provide accurate real-world fuel economy estimates for every consumer. With any estimate, there will always be consumers that get better or worse actual fuel economy. The EPA estimates are meant to be a general guideline for consumers, particularly to compare the relative fuel economy of one vehicle to another. Nevertheless, we do believe that today's new fuel economy test methods will do a better job of giving consumers a more accurate estimate of the fuel economy they can achieve in the real-world.

It is essential that our fuel economy estimates continue to be derived from controlled, repeatable, laboratory tests. However, the inputs to our estimates are based on data from actual real-world driving behavior and conditions. Because the test is controlled and repeatable, an EPA fuel economy test result can be used for comparison of different vehicle models and types. EPA and manufacturers test over 1,250 vehicle models annually and every test is run under identical conditions and under a precise driver's trace, which assures that the result will be the same for an individual vehicle model no matter when and where the laboratory test is performed. Variations in temperature, road grade, driving patterns, and other variables do not impact the result of the test. While such external conditions impact fuel economy on a trip-to-trip basis, they do not change the laboratory test result. Therefore, a repeatable test provides a level playing field for all vehicles, which is essential for comparing the fuel economy of one vehicle to another. Finally, EPA must preserve the ability to confirm the values achieved by the manufacturers' testing, and this can only be achieved with a highly repeatable test or set of tests. No other fuel economy test program provides the level of repeatability as the EPA program.

However, the EPA fuel economy test methods need to reflect real world conditions as well as being a repeatable test. While some organizations have issued their own fuel economy numbers based on on-road driving, this approach introduces a wide number of variables—different drivers, driving patterns, weather conditions, temperatures, etc.—that make repeatability impossible. Our proposed fuel economy test methods are more representative of real-world

conditions than the current fuel economy tests—yet we would retain our practice of relying on controlled, repeatable, laboratory tests.

The methods used today for calculating the city and highway mpg estimates were established in the 1970's, and were adjusted in the mid-1980's. Since these adjustments were made, America's driving behavior has changed. In the past 20 years, speed limits have increased and vehicles have been designed for higher power—as a result, Americans are driving faster and more aggressively than ever before. Vehicle technology has changed markedly, and many more vehicles are equipped with energy-consuming accessories like air conditioning. These and other factors are not accounted for in the current test procedures used to determine the city and highway mpg estimates. Our analyses indicate that if these factors were better accounted for, the city and highway fuel economy label estimates would be generally lower and closer to the average real-world experience of consumers.

A fundamental issue with today's fuel economy estimates is that the underlying test procedures do not fully represent real-world driving conditions. Some of the key limitations are that the highway test has a top speed of only 60 miles per hour, both the city and highway tests are run at mild climatic conditions (75 deg. F), both tests have mild acceleration rates, and neither test is run with the use of accessories, such as air conditioning. However, since the time of the last fuel economy labeling revisions in the mid-1980's, EPA has established several additional test procedures, used for emissions compliance purposes, which capture a much broader range of real-world driving conditions. Specifically, these emissions test cycles capture the effects of higher speeds, more aggressive driving (i.e., higher acceleration rates), the use of air conditioning at higher ambient temperatures, and colder temperature operation. Our analysis indicates that these factors can have a significant impact on fuel economy, and that the impacts can vary widely across different vehicles.

Today, we are proposing that three additional emission tests, already used by manufacturers, could be utilized to derive more accurate fuel economy estimates. These three test procedures encompass a much broader range of real-world driving, as they incorporate the effects of higher speeds, more rapid accelerations, air conditioning use, and cold temperatures. Our proposed approach would utilize these additional emission tests, together with the current two fuel economy tests, so that our fuel economy test methods reflect a much broader range of driving conditions.

In the Energy Policy Act of 2005, Congress required EPA to update or revise adjustment factors to better reflect a variety of real-world factors that affect fuel economy. Section 774 of the Act directs EPA to "* * * update or revise the adjustment factors in [certain sections of the fuel economy labeling regulations] to take into consideration higher speed limits, faster acceleration rates, variations in temperature, use of air conditioning, shorter city test cycle lengths, current reference fuels, and the use of other fuel depleting features." [1] Today's proposal does take into account these conditions and would address this statutory requirement.

Over the past few years, there have been several independent studies comparing EPA's fuel economy estimates to the real-world experience of consumers. These studies confirm that there is considerable variation in real-world fuel economy, and provide further evidence that EPA's mileage ratings often overestimate real-world fuel economy. Although these studies differ in a number of variables, including their test methods, driving conditions, and fuel economy measurement techniques, they indicate that EPA's approach to estimating fuel economy needs to be improved to better represent some key real-world fuel economy impacts.

Currently the same test procedures are used for both the window sticker estimates and the fuel economy values used to determine a manufacturer's corporate average fuel economy (CAFE), although the label estimates are adjusted downward. This proposal would not alter the test procedures, driving cycles, measurement techniques, or the calculation methods used to determine CAFE. The Energy Policy and Conservation Act of 1975 requires that CAFE values be determined from the EPA test procedures in place as of 1975 (or procedures that give comparable results), meaning that whatever action we take to improve the window sticker estimates must leave in place the existing tests used for CAFE determination. The proposed test methods for determining the new fuel economy label estimates would be incorporated in sections of the regulations that are entirely separate from the CAFE regulations.

This section begins with a history of EPA's involvement in fuel economy programs. Then we discuss why we are taking action, including discussions of the limitations of the current tests, various data sources of real-world fuel economy, the additional real-world driving conditions captured by other emissions tests procedures, and the impact of these factors on fuel economy. We then provide an overview of our proposed new fuel economy test methods (which are discussed in detail in Section II), and conclude with a discussion of the relevant Federal statutes and how they bear on this proposal.

A. History of Federal Fuel Economy Requirements

The Energy Policy and Conservation Act of 1975 (EPCA) established two primary fuel economy requirements: (1) Fuel economy information, designed for public use, in the form of fuel economy labels posted on window stickers of all new motor vehicles, and the publication of an annual booklet of fuel economy information to be made available free to the public by car dealers; and (2) calculation of a manufacturer's average fuel economy and compliance with a standard (later, this compliance program became known as the Corporate Average Fuel Economy (CAFE) program). The responsibilities for these requirements were split between EPA, the Department of Transportation (DOT) and the Department of Energy (DOE). EPA is responsible for establishing the test methods and procedures both for determining the fuel economy estimates to be posted on the window stickers and in the annual booklet, and for the calculation of a manufacturer's corporate average fuel economy. DOT is responsible for administering the CAFE compliance program, including establishing standards for non-passenger automobiles and determining if manufacturers were complying with the applicable CAFE standards, and assessing any penalties as needed. DOE is responsible for publishing and distributing the annual fuel economy information booklet.

EPA published regulations implementing portions of the EPCA statute in 1976.[2] The provisions in this regulation, effective with the 1977 model year, established procedures to calculate fuel economy values for labeling and CAFE purposes that used the Federal Test Procedure (FTP or "city" test) and the Highway Fuel Economy Test (HFET or "highway" test) data as the basis for the calculations. At that time, the fundamental process for determining fuel economy was the same for labeling as for CAFE, except that the

[1] Pub. L. 109–58, 119 Stat. 835 (2005).

[2] See 41 FR 38685, which is promulgated at 40 CFR Part 600.

CAFE calculations combined the city and highway fuel economy into a single number.

After a few years of public exposure to the fuel economy estimates on the window stickers of new vehicles, it soon became apparent that drivers were disappointed that they were not often achieving these estimates on the road and that they expected them to be as accurate as possible. In 1978, Congress recognized the concern about differences between EPA estimated fuel economy values and actual consumer experience and mandated a study under section 404 of the National Energy Conservation Policy Act of 1978.[3] In February, 1980, a set of hearings were conducted by the U.S. House of Representatives Subcommittee on Environment, Energy, and National Resources. One of the recommendations in the subsequent report by the Subcommittee was that ''EPA devise a new MPG system for labeling new cars and for the Gas Mileage Guide that provides fuel economy values, or a range of values, that most drivers can reasonably expect to experience.''[4]

EPA commenced a rulemaking process in 1980 to revise its fuel economy labeling procedures, and analyzed a vast amount of in-use fuel economy data.[5] In 1984, EPA published new fuel economy labeling procedures that were applicable to 1985 and later model year vehicles.[6] The decision was made to retain the FTP and highway test procedures, primarily because those procedures were also used for other purposes—emissions certification and CAFE determination. Based on the in-use fuel economy data, however, it was evident that the final fuel economy values put on the labels needed to be adjusted downward in order to more accurately reflect consumers' average fuel economy experience. The final rule, therefore, included downward adjustment factors for both the city and highway label fuel economy estimates. The city values (based on the raw FTP test data) were adjusted downward by 10 percent and the highway values (likewise based on the raw highway test data) were adjusted downward by 22 percent.

EPA projected at the time that these adjustments would put the average city and highway MPG values in the middle of the range of fuel economy values experienced by consumers.[7] During the rulemaking process, the Office of Management and Budget (OMB) expressed concern that fuel economy estimates based on the average experience would result in a significant number of drivers failing to achieve that fuel economy. They requested that EPA provide a range of values on the label that would encompass the expected fuel economy of about 75 percent of the driving population.[8] To address this concern, in the final rule, EPA required the label to contain the range of city and highway fuel economy that most drivers should expect. Based on our understanding of the frequency distribution of in-use fuel economy data at the time, the range was set at plus or minus 15 percent of the stated city and highway estimates, and appears on fuel economy labels today as small print text. Further in this section, we discuss, in the context of today's proposal, similar issues regarding how best to communicate to the public the level of the city and highway mpg estimates, as well as the range of drivers' fuel economy experience.

B. Why Is Today's Action Warranted?

The fundamental problem with the current fuel economy estimates is that the test procedures on which they are based do not reflect a broad enough range of in-use driving conditions. The current test procedures omit several critical factors that are prevalent in the real-world and that can have a significant impact on fuel economy. Key among these are higher speeds, faster accelerations, the use of air conditioning, and colder temperatures. The impact of these factors on fuel economy can vary widely from vehicle to vehicle. However, for emissions compliance, we have already developed additional test procedures to account for these factors, and these test procedures are already being regularly used by the auto companies. Today, we are proposing to use these tests, in conjunction with the existing fuel economy tests, as an input into the calculation of fuel economy estimates. In doing so, the fuel economy test methods would reflect a much broader range of real-world conditions than they do today.

There is broad-based support among automobile manufacturers and other stakeholders proposing changes to current fuel economy estimates. Congress recognized the need for action by including a provision in the Energy Policy Act of 2005 requiring EPA to revise its fuel economy estimates. EPA has worked closely with auto manufacturers, states, and other organizations in developing this proposed rule.

Bluewater Network petitioned EPA to revise the fuel economy labeling test procedures.[9] EPA published a **Federal Register** notice requesting comments on the petition, and received over 33,000 comments.[10] Nearly all of these comments support the revision of EPA's fuel economy estimates to better reflect real world driving. Today's proposal is responsive to this petition.

1. Fuel Economy Labels Could Be Improved To Better Reflect Real-World Driving

First, it is important to stress that the EPA city and highway mpg ratings are estimates—they are not intended to give consumers an exact indication of the fuel economy they will achieve. The complete range of consumer fuel economy experience can not be represented perfectly by any one estimate. Fuel economy varies based on a wide range of factors, which we have discussed above. There will always be consumers that achieve real-world fuel economy both better and worse than a given estimate.

In the past few years, there have been a number of studies, conducted by a variety of sources, suggesting that there is often a shortfall between the EPA estimates and real-world fuel economy. Several organizations have provided consumers with their own fuel economy estimates, which in some cases vary from EPA's estimates. For example, Consumer Reports utilizes on-road driving to measure fuel economy under a variety of conditions. They derive city, highway, and overall fuel economy estimates, and their methods clearly demonstrate the large degree of variation across vehicles. While their city fuel economy estimates fall on average below the EPA label values, their highway estimates are, on average, higher than the EPA label values. Consumer Reports' overall fuel economy estimates range from 27 percent below to 20 percent above the EPA overall rating. The Automobile Association of America (AAA) likewise publishes the

[3] Pub. L. 95–619, Title IV, 404 (November 9, 1978).

[4] See House Committee on Government Operations, ''Automobile Fuel Economy: EPA's Performance,'' Report 96–948, May 13, 1980.

[5] See ''Passenger Car Fuel Economy: EPA and Road,'' U.S. Environmental Protection Agency, Report no. EPA 460/3–80–010, September, 1980, and ''Technical Support Report for Rulemaking Action: Light Duty Vehicle Fuel Economy Labeling,'' U.S. Environmental Protection Agency, Report no. EPA/AA/CTAB/FE–81–6, October, 1980.

[6] See 49 FR 13845, April 6, 1984, and 49 FR 48149, December 10, 1984.

[7] See 49 FR 13832, April 16, 1984.

[8] See 49 FR 13835, April 16, 1984.

[9] The Bluewater Network petition was submitted to EPA on June 7, 2002.

[10] See 69 FR 16188, March 29, 2004.

fuel economy results they achieve in their annual auto guide for new cars and trucks. In their 2004 auto guide, about half of their estimates were below the EPA combined city/highway value, and about one half were above the EPA city/highway combined value. Their estimates ranged from 40 percent lower than EPA's to 22 percent higher, again reflecting a great deal of vehicle-to-vehicle variation. Other sources of fuel economy data include Edmunds.com, the Department of Energy's (DOE) ''Your MPG'' database on the fueleconomy.gov Web site, and DOE's FreedomCar program.

Each of these studies differs in its test methods, driving cycles, sampling of vehicles, and methods of measuring fuel economy. There are strengths and weaknesses of each study, which we discuss further in Section II and in the Draft Technical Support Document. Collectively, these studies indicate there are many cases where real-world fuel economy falls below the EPA estimates. The studies also indicate that real-world fuel economy varies significantly depending on the conditions under which it is evaluated. Nevertheless, taken as a whole, these studies reflect a wide range of real-world driving conditions, and show that fuel economy can be much lower than EPA's estimates if more real-world conditions are considered.

The fundamental problem with the current fuel economy estimates is that the test procedures on which they are based are missing a number of critical factors that exist in real-world driving and have a significant impact on fuel economy. The following section discusses the limitations of our existing fuel economy test procedures.

2. Today's Fuel Economy Tests Do Not Represent the Full Range of Driving Conditions

The current city and highway fuel economy tests do not represent the full range of real-world driving conditions. The 1985 adjustment factors were designed to ensure that the fuel economy estimates across the vehicle fleet reflected the average impacts of a number of conditions not represented on the tests. However, as we noted earlier, many changes have occurred since then that make it once again a reasonable time to reevaluate the fuel economy test methods. Given the significant degree of variation that is apparent across vehicles, we believe it is important to reconsider the approach of ''one-size-fits-all'' adjustment factors and instead move to an approach that more directly reflects the impacts of fuel economy on individual vehicle models.

The city fuel economy estimate is based on the Federal Test Procedure (FTP), which was designed to measure a vehicle's tailpipe emissions under urban driving conditions. The driving cycle used for the FTP is called the LA–4, which was developed in the mid-1960's to represent home-to-work commuting in Los Angeles. The FTP is also one of the tests used to determine emissions compliance today. The FTP includes a series of accelerations, decelerations, and idling (such as at stop lights). It also includes starting the vehicle after it has been parked for an extended period of time (called a ''cold start''), as well as a start on a warmed-up engine (called a ''hot start''). The total distance covered by the FTP is about 11 miles and the average speed is about 21 mph, with a maximum speed of about 56 mph.

The highway fuel economy estimate is based on the Highway Fuel Economy Test (HFET), which was developed by EPA in 1974 and was designed to represent a mix of interstate highway and rural driving. It consists of relatively constant higher-speed driving, with no engine starts or idling time. The HFET covers a distance of about 10 miles, at an average speed of 49 mph and a top speed of about 60 mph.

There are several key limitations in the FTP and HFET tests that cause them to not adequately reflect real-world driving today. First, most consumers understandably think ''highway'' fuel economy means the fuel economy you can expect under freeway driving conditions. In fact, the highway test has a top speed of only 60 mph, since the test was developed more than 20 years ago to represent more rural driving conditions at a time when the national speed limit was 55 miles per hour. The national speed limit since has been eliminated, states have established speed limits of 65 to 70 miles per hour, and much driving is at even higher speeds. Recent real-world driving studies indicate that about 28 percent of driving (vehicle miles traveled, or VMT) is at speeds of greater than 60 mph. (This analysis is detailed in the Draft Technical Support Document). These studies also show that 33 percent of real-world driving VMT falls outside the FTP/HFET speed and acceleration activity region. Thus, a substantial amount of high speed driving is not captured at all in today's FTP or HFET tests. This is a critical weakness in our current fuel economy test procedures. Since higher speed driving has a negative impact on fuel economy, incorporating these higher speed driving conditions into the fuel economy tests would lower the fuel economy estimates.

Second, the maximum acceleration rates of both the FTP and HFET tests are a relatively mild 3.3 miles-per-hour per second, considerably lower than the maximum acceleration rates seen in real-world driving. Recent real-world driving studies indicate that maximum acceleration rates are as high as 11 to 12 mph/sec and significant activity occurs beyond 3.3 mph/sec. Even at the time these tests were first developed, the real-world accelerations were higher than 3.3 mph/sec, but the test cycle's acceleration rates needed to be constrained to the mechanical limitation of the dynamometer test equipment. These constraints no longer exist with today's dynamometers, so we now have the ability to incorporate higher maximum acceleration rates that more closely reflect those of actual driving. In fact, we have incorporated higher acceleration rates into a test recently developed for emissions compliance, which we discuss in the next section. As with high speed driving, higher acceleration rates have a negative impact on fuel economy; thus, if these higher accelerations were factored into our fuel economy methods, the estimates would be lower.

The maximum deceleration rate of the FTP and HFET tests is important to consider as well, because it relates to the regenerative breaking effect of hybrid electric vehicles. The FTP and HFET tests include a mild maximum deceleration rate of -3.3 mph/sec; yet in recent real-world driving rates as high as -11 to -17 mph/sec were recorded. Under higher deceleration rates, the effects of regenerative breaking for hybrid electric vehicles are diminished, thereby lowering fuel economy. In this regard, today's FTP and HFET tests result in better fuel economy, which is seldom achieved under actual driving conditions.

Third, both tests are run at mild ambient conditions (approximately 75 degrees Fahrenheit), while real-world driving occurs at a wide range of ambient temperatures. Fuel economy is lower at temperatures colder or warmer than the 75 degree F test temperature. Only about 20 percent of VMT occurs between 70 and 80 degrees F—approximately 15 percent of VMT occurs at temperatures above 80 degrees F, and 65 percent occurs below 70 degrees F. Moreover, neither the FTP nor HFET tests are run with accessories operating, such as air conditioners, heaters, or defrosters. These accessories, most notably air conditioning, can have a significant impact on a vehicle's fuel economy.

Finally, there are many factors that affect fuel economy that cannot be replicated on dynamometer test cycles in a laboratory. These include road grade, wind, vehicle maintenance (e.g., tire pressure), snow/ice, precipitation, fuel effects, and others. It is not possible to develop a test cycle that captures the full range of factors impacting fuel economy. However, it is clear that the FTP and HFET tests alone are missing some critical elements of real-world driving. All of these factors have a negative impact on fuel economy. This largely explains why our current estimates often do not reflect consumers' real-world fuel economy experience. However, since the 1985 adjustment factors were established, EPA has adopted several new test cycles for emission compliance purposes, which collectively represent a much broader range of in-use driving conditions than those captured by the FTP and HFET tests. These additional emission tests, discussed below, can be brought into the fuel economy estimate calculations.

3. Additional Emissions Tests Reflect a Broader Range of Real-World Driving Conditions

Since 1984 when we last updated the fuel economy estimate methodology, EPA has established several new test cycles for emissions certification. EPA was concerned that the FTP omitted many critical driving modes and conditions that existed in actual use, and that emissions could be substantially higher during these driving modes compared to the FTP. Manufacturers were frequently designing their vehicles' emission control systems to meet the specified FTP test conditions, and actual emission levels could be quite different under the broader range of real-world ''off-cycle'' conditions.

The need for these actions was recognized by Congress, in the passage of Sections 206(h) and 202(j) of the Clean Air Act Amendments of 1990 (CAAA).[11] Section 206(h) required EPA to study and revise as necessary the test procedures used to measure emissions, taking into consideration the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude. Section 202(j) of the CAAA required EPA to establish emission standards for carbon monoxide under cold (20 deg. F) temperature conditions.

In 1992, EPA published rules implementing the 202(j) cold temperature testing requirement, acknowledging that the ambient temperature conditions of the FTP test (run between 68 and 86 °F) do not represent the full range of ambient temperature conditions that exist across the United States and that cold temperature had different emissions effects on different vehicle designs.[12] EPA's cold temperature emission regulations required manufacturers to conduct FTP testing at 20 °F. By promulgating this new test procedure and associated emission standard, EPA sought to encourage manufacturers to employ better emission control strategies that would improve ambient air quality across a wider range of in-use conditions.

In fulfillment of the 206(h) CAAA requirement, EPA published a report in 1993 which concluded that the FTP cycle did not represent the full range of urban driving conditions that could impact the in-use driving emission levels.[13] Consequently, EPA promulgated a rule in 1996 that established two new test procedures, with associated emission standards, that addressed certain shortcomings with the current FTP.[14] Known as the ''Supplemental FTP,'' or ''SFTP,'' these procedures, similar to the cold temperature FTP, encouraged the use of the better emission controls across a wider range of in-use driving conditions in order to improve ambient air quality.

One of the new test cycles, the US06, was designed to address high speed, aggressive driving behavior (with more severe acceleration rates and speeds) as well as rapid and frequent speed fluctuations. The US06 test contains both lower-speed city driving and higher-speed highway driving modes.[15] Its top speed is 80 mph, and average speed is 48 mph. The top acceleration rate exceeds eight mph per second. The other new SFTP test, the SC03, was designed to address air-conditioner operation under a full simulation of high temperature (95 °F), high sun-load, and high humidity. The SC03 drive cycle was designed to represent driving immediately following a vehicle startup, and rapid and frequent speed fluctuations.[16] Its top speed is about 55 mph and average speed is 22 mph. The top acceleration rate is about five mph per second.

The basis for the SFTP rulemaking was a study of real-world driving in four cities, Baltimore, Spokane, Atlanta and Los Angeles, where driving activity was measured on instrumented vehicles as well as by chase cars.[17] [18] At that time, it was found that 18 percent of the driving (in Baltimore) occurred outside of the speed/acceleration distribution of the FTP drive schedule. More recent real-world driving activity data indicates that driving has become even more aggressive than it was in 1992. Recent real-world activity data collected in California and Kansas City found that about 28 percent of driving (vehicle miles traveled) is at speeds greater than 60 mph. Further, about 33 percent of recent real-world driving falls outside of the FTP/HFET speed and acceleration activity region.[19] [20] [21] [22] This is based on extensive chase car studies in California and instrumented vehicle studies in Kansas City. Our assessment of these recent real-world driving activity studies is described in detail in the Draft Technical Support Document.

Clearly, the FTP and HFET tests alone do not fully capture the broad range of real-world driving conditions. In order for EPA's fuel economy tests to be more representative of key aspects of real-world driving, it is critical that we consider the test conditions represented by these additional emission tests.

4. Fuel Economy on Driving Modes Represented by Additional Emissions Tests is Lower for Many Vehicles

As discussed above, there are several key conditions missing from the current fuel economy test procedures that are prevalent in real-world driving. These conditions—higher speeds, faster

[11] See 42 U.S.C. 7525(h), 42 U.S.C. 7521(j).

[12] See 57 FR 31888, July 17, 1992.

[13] U.S. Environmental Protection Agency. Federal Test Procedure Review Project: Preliminary Technical Report. U.S. Environmental Protection Agency, No. EPA420–R–93–007, May 1993. Website: *http://www.epa.gov/otaq/sftp.htm.*

[14] See 61 FR 54854 published on October 22, 1996.

[15] See 40 CFR Part 86 Appendix I (g).

[16] Ref. 40 CFR Part 86 Appendix I (h).

[17] Final Technical Report on Aggressive Driving Behavior for the Revised Federal Test Procedure Notice of Proposed Rulemaking, 1995. Website: *http://www.epa.gov/otaq/sftp.htm.*

[18] U.S. Environmental Protection Agency. Federal Test Procedure Review Project: Preliminary Technical Report. U.S. Environmental Protection Agency, No. EPA420-R–93–007, May 1993. Website: *http://www.epa.gov/otaq/sftp.htm.*

[19] Sierra Research, Inc., ''Task Order No. 2 SCF Improvement—Field Data Collection,'' Sierra Report No. SR02–07–04, July, 2002.

[20] U.S. EPA Draft Technical Support Document ''Fuel Economy Labeling of Motor Vehicles: Revisions to Improve Calculation of Fuel Economy Estimates,'' December, 2005.

[21] Brzezinski, D., E. Nam, J. Koupal, G. Hoffman. Changes in Real World Driving Behavior: Analysis of Recent Driving Activity Data. Proceedings of the 15th Coordinating Research Council On Road Vehicle Emissions Workshop, 2005.

[22] Eastern Research Group. Late Model Vehicle Emissions and Fuel Economy Characterization Study: Addendum to the Kansas City Exhaust Characterization Study-Draft Report. ERG No. 0133.18.004.001, September 26, 2005.

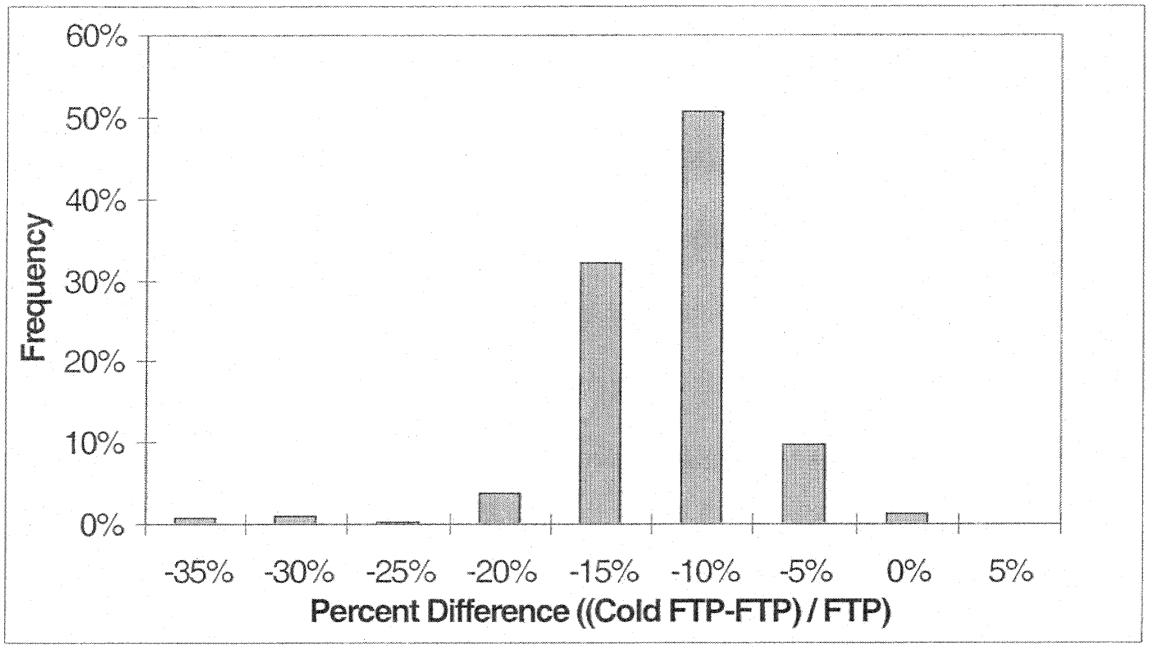
accelerations, air conditioning operation, and cold temperatures—have already been incorporated into our test procedures for emissions compliance, as a result of our finding in the 1990's that they have a significant impact on emissions. Our analysis below demonstrates that these additional driving conditions can also have a significant impact on fuel economy—and that these impacts vary widely from vehicle to vehicle. Thus, we believe that these factors need to be included in our fuel economy test methods.

We analyzed fuel economy data collected by manufacturers for emissions certification purposes in the 2003, 2004 and 2005 model years. This analysis included data from all five tests used for emissions compliance today, including the FTP, HFET, US06, SC03, and Cold Temperature FTP. The fuel economy measured on the standard fuel economy tests (FTP and HFET) was compared to the fuel economy on the other emissions certification tests (US06, SC03, and Cold FTP) in order to assess the impact of these factors on fuel economy. The analysis includes data from more than 400 vehicles. Comparisons were made to the unadjusted city and highway fuel economy test results, and the findings are summarized below. Because so many other factors bear on real-world consumer experience, it is important to point out that these comparisons are not intended to indicate the exact impact of a given factor on real-world fuel economy. However, comparing these different test results is informative because we establish the relative magnitude of the impacts and of the variation across vehicles. The entire report of this analysis is in the docket for this rulemaking.[23]

a. *Cold Temperature Operation.* To assess the impact of cold temperature operation on fuel economy, we compared the fuel economy measured over the Cold FTP test directly to that over the standard FTP test. The driving cycles in these two tests are identical (i.e., the LA4 cycle). Both tests include both cold and hot starts at their respective ambient temperatures, and both tests are generally run with accessories turned off. The difference in fuel economy should therefore be entirely due to the difference in ambient temperature: 20 °F versus 75 °F.

On average, fuel economy over the Cold FTP was about 12 percent lower than over the standard FTP. There was wide vehicle-to-vehicle variation, with the loss in fuel economy due to the cold conditions as much as 40 percent. Figure I.B–1 below shows the range of cold temperature impacts. Hybrid vehicles tended to show the greatest sensitivity to cold temperature. Of the six vehicles showing a cold temperature impact of greater than 30 percent, five are hybrids. Overall, conventional gasoline vehicles averaged a cold temperature effect of about −11 percent, while the impact on hybrid vehicles averaged about −32 percent.

Figure I.B-1. – Cold Temperature Impacts

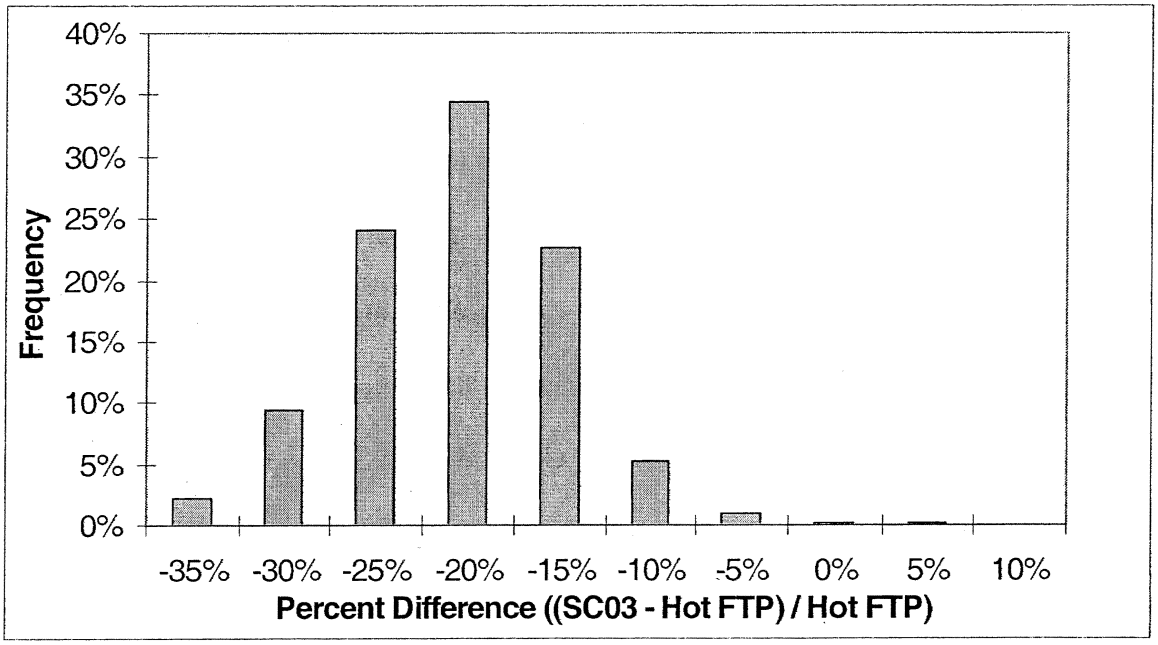


b. *Air Conditioning.* To assess the impact of air conditioning on fuel economy, we compared the fuel economy measured over the SC03 test to a comparable portion of the FTP. The SC03 test is run with the air-conditioning turned onto its maximum setting in a test cell set at 95 °F with strong sun load and moderate humidity. On average, air conditioner operation at 95 °F reduced fuel economy by about 21 percent. The impact of air conditioning ranged from −41 percent to −25 percent for more than a third of the vehicles. Similar to the cold temperature impacts, there was a great deal of vehicle-to-vehicle variation in the impact of air conditioning on fuel economy. Figure I.B–2 shows the distribution of the percentage differences (negative numbers indicate lower fuel economy over SC03). As can be seen in the figure, the vast majority of vehicles show an impact of −27.5

[23] U.S. Environmental Protection Agency, Office of Transportation and Air Quality, ''Vehicle Fuel Economy Labeling and The Effect of Cold Temperature, Air-Conditioning Usage and Aggressive Driving on Fuel Economy,'' Draft Staff Report, August 2005.

percent to −7.5 percent. Hybrid vehicles tended to show greater sensitivity to air conditioning operation than conventional vehicles. The effect of air conditioning operation reduced hybrid fuel economy by 31 percent, 50 percent greater than the 20 percent impact on conventional vehicle fuel economy.

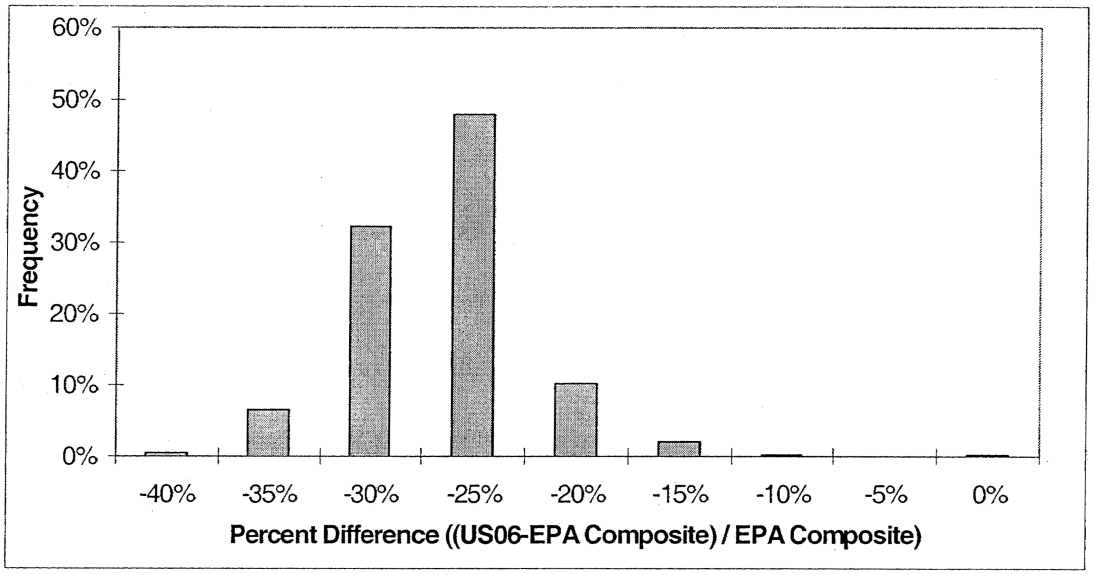
Figure I.B-2. – Air Conditioning Impacts



c. *Aggressive and High-Speed Driving.* The US06 test was designed to address aggressive driving behavior, such as high acceleration rates and high speeds. The US06 test contains both lower-speed but aggressive urban driving and higher-speed highway driving modes. Because of the different driving modes contained on the US06 test, for the purpose of assessing the impacts of high speed and aggressive driving we developed a combination of the city and highway tests which is roughly comparable to that contained in the US06 cycle.

On average, the fuel economy over the US06 cycle was almost 30 percent lower than over the composite FTP and HFET fuel economy. The observed impacts ranged from −44 percent to −25 percent for more than 80 percent of the vehicles. Figure I.B–3 shows the distribution of per vehicle impacts due to the aggressive driving of the US06 cycle. Hybrid vehicles showed a slightly greater impact of aggressive driving on fuel economy than conventional gasoline vehicles (33 percent versus 29 percent, respectively).

Figure I.B-3. – High Speed and Aggressive Driving Impacts



d. *Conclusions.* Many of the vehicles whose fuel economies were most affected by these driving conditions were hybrids and other high mile-per-gallon vehicles. In general, high mpg vehicles will be more sensitive to changes in driving conditions for two reasons. One, because they use relatively little fuel in the first place, any increase in fuel consumption will show up as a relatively larger percentage fuel consumption increase. Two, because of the non-linearity of fuel economy with respect to fuel consumption, an increase in fuel consumption will lower the fuel economy of a high mpg vehicle much more than it will lower the fuel economy of a low mpg vehicle. For example, the fuel consumption increase associated with a 35 mpg rating that actually achieves 30 mpg in the real-world is the same as a 15 mpg rating that actually achieves 14 mpg.

Hybrids, most of which achieve relatively high mpg and therefore share the issues discussed above, also face some additional challenges. Hybrids may well be the most significant powertrain technology innovation driven to market commercialization primarily because of its fuel economy potential. In addition, the nature of hybrid technology (the addition of a battery as a second source of on-board power, sophisticated control systems, sometimes a smaller engine) suggests that fuel economy will likely be more sensitive to certain conditions such as high acceleration and deceleration rates, cold ambient temperatures, etc. Finally, by industry standards, hybrids are a relatively young technology, and there is every reason to believe that as the technology matures, hybrid vehicle fuel economy will become much more robust over a broader range of driver behavior and climate conditions.

This analysis clearly shows that the driving conditions represented by US06, SC03 and Cold FTP tests can have substantial, measurable negative impact on fuel economy. There also is a large amount of vehicle-to-vehicle variation—that is, different vehicles are impacted differently by these factors. These findings call into question the appropriateness of the continued use of the current ''one-size-fits-all'' 10 and 22 percent adjustment factors applied, respectively, to FTP and HFET fuel economy test results. The FTP and HFET tests clearly do not adequately reflect the broad range of conditions that exist in today's real-world driving. The additional emission test cycles incorporate several critical factors that are present in real-world driving, and that can have a significant impact on fuel economy. Thus, these additional emission test cycles need to be brought into the fuel economy test methods, so that the estimates themselves will be more representative of the fuel economy consumers can expect to achieve in the real-world.

C. What New Requirements Are We Proposing?

We are proposing to revise and improve the methods used to determine the city and highway fuel economy estimates by incorporating fuel economy results over a broader range of driving conditions. An overview of this proposal is provided below. Section II provides a detailed explanation of the proposed new test methods, as well as the data and analysis upon which it is based.

In addition, we are proposing minor changes to revise the format and content of the fuel economy label to make the information more useful to consumers. We also are proposing minor changes related to the fuel economy information program, including revising the comparable vehicle classes and adding a new provision for the electronic distribution of the annual Fuel Economy Guide. An overview of each of these proposals follows.

1. Revised Test Methods for Calculating City and Highway Fuel Economy Estimates

Today's proposal would revise the test methods by which the city and highway fuel economy estimates are calculated. We are proposing to replace the current method of adjusting the city (FTP) test result downward by 10 percent and the highway (HFET) test result downward by 22 percent. Instead, we are proposing a new approach that incorporates additional test methods that address factors that impact fuel economy, but are missing from today's tests—specifically, higher speeds, more aggressive driving (e.g., higher acceleration rates), the use of air conditioning, and the effect of cold temperature. The proposed test methods

would bring into the fuel economy estimates the test results from the five emissions tests in place today: FTP, HFET, US06, SC03, and Cold FTP. Thus, we refer to this as the ''5-cycle'' method. Under our proposal, rather than basing the city mpg estimate solely on the adjusted FTP test result, and the highway mpg estimate solely on the adjusted HFET test result, each estimate would be based on a ''composite'' calculation of all five tests, weighting each appropriately to arrive at new city and highway mpg estimates. The new city and highway estimates would each be calculated according to separate city and highway ''5-cycle'' formulae that are based on fuel economy results over these five tests. The conditions represented by each test would be ''weighted'' according to how much they occur over average real-world city or highway driving. For example, we have derived weightings to represent driving cycle effects, trip length, air conditioner compressor-on usage, and operation over various temperatures. This methodology is described in detail in Section II.

We also are proposing a downward adjustment to account for effects that are not reflected in our existing five test cycles. There are many factors that impact fuel economy, but are difficult to account for in the test cell on the dynamometer. These include roadway roughness, road grade (hills), wind, tire pressure, heavier loads, hills, snow/ice, effects of ethanol in gasoline, larger vehicle loads (e.g., trailers, cargo, multiple passengers), and others. Current data indicates that these impacts can lower fuel economy from 9 to 13 percent. Thus, we need to account for these factors in our new test methods, as they will lower a driver's fuel economy beyond those factors we are accounting for from our existing test cycles. We are proposing an 11 percent downward adjustment to account for these non-dynamometer effects. Our basis for this downward adjustment factor is detailed in Section II.C.3 and the Draft Technical Support Document.

The 5-cycle approach, including this 11 percent downward adjustment factor to account for non-dynamometer effects, will result in city and highway estimates that reflect average fuel economy. We are proposing to continue to set the city and highway mpg estimates at the average, or mean, level. However, we understand that many drivers expect to achieve or exceed the fuel economy indicated by these mpg estimates. By continuing to set the estimates at the average level, by definition, half of drivers will get worse fuel economy than the label values. We seek comment on whether the city and highway estimates should be set a level that is lower than average—for example, to ensure that 75 percent, or even more, of drivers achieve or exceed the label values.

Because the 5-cycle method is inherently vehicle-specific, the difference between today's values and the new fuel economy estimates could vary widely from vehicle to vehicle. Today's proposed approach would result in city fuel economy estimates that are between 10 to 20 percent lower than today's labels for the majority of conventional vehicles. For vehicles that achieve generally better fuel economy, such as gasoline-electric hybrid vehicles, new city estimates would be about 20 to 30 percent lower than today's labels. The new highway fuel economy estimates would be 5 to 15 percent lower for the majority of vehicles, including hybrids.

Today's proposal would greatly improve the EPA fuel economy estimates, so that they come closer to the fuel economy that consumers achieve in the real-world. However, as discussed previously in this notice, these are still estimates. Even with the improved fuel economy test methods proposed today, some consumers will continue to get fuel economy that is higher or lower than the new estimates.

Under this new 5-cycle approach, some auto manufacturers have expressed concern about the potential for increased test burden. The three additional emission tests that we propose to include in the fuel economy calculation are run today on a much more limited number of vehicle groups than are the FTP and HFET tests. Typically, for every 3–4 FTP and HFET tests conducted, only one US06 or SC03 test is run, and cold FTP testing is even more limited. If we were to require full 5-cycle testing across all vehicle types, the testing demands for the auto industry could increase dramatically, and could trigger the need for a major expansion of their testing facilities.

Thus, we are proposing to implement the new fuel economy test methods in a way that gives the auto industry sufficient lead time to plan for their increased testing needs. This enables us to implement an improved fuel economy label methodology as soon as possible—in the 2008 model year. We also are implementing an approach that mitigates the testing burden where warranted. We have done this in two key ways.

First, for the first three model years (2008 through 2010), we would provide manufacturers with the option of using a scale of adjustments based on an analysis of data developed from the 5-cycle method. This approach, called the mpg-based approach, incorporates the effects of higher speed/aggressive driving, air conditioning use, and colder temperatures, but less directly than the 5-cycle vehicle-specific method. The mpg-based adjustments were derived by applying the 5-cycle formulae to a data set of recent fuel economy test data, and developing a regression line through the data. (See Section II for a full description of this approach). These adjustments differ based on the mpg a vehicle obtains over the FTP (City) or HFET (Highway) tests. In other words, every vehicle with the same mpg on the FTP test would receive the same adjustment for its city fuel economy label. Likewise, every vehicle with the same mpg on the HFET test would receive the same adjustment for its highway fuel economy label. This method of adjustment would not require any testing beyond the FTP/HFET tests already performed today, thus, it can be implemented sooner than the 5-cycle approach as an interim improvement to our fuel economy test methods. However, during this timeframe, manufacturers may choose to run full 5-cycle testing for any of their vehicle models. This approach would provide consumers with more accurate estimates, while allowing the industry the necessary lead time to prepare for the necessary testing under the 5-cycle approach.

Second, when we move to the 5-cycle vehicle-specific approach in model years 2011 and beyond, we are proposing criteria that would select specific vehicle groups for full 5-cycle testing, rather than requiring complete 5-cycle data generation for every vehicle. We believe this approach would result in fuel economy estimates that are generally as accurate as they would be under full 5-cycle testing. In other words, we are only requiring full 5-cycle testing where we can predict with reasonable certainty that the fuel economy results under the 5-cycle method would yield a significantly different result than the mpg-based adjustments.

We propose to establish a tolerance band around the mpg-based city and highway adjustment lines. Manufacturers would be required to calculate a 5-cycle fuel economy estimate for each vehicle group for which 5-cycle data exists for emissions purposes. If the 5-cycle fuel economy estimate for this vehicle group falls below the respective tolerance band around the mpg adjustment line, then the manufacturer would be eligible to use the mpg-based adjustments for each

vehicle configuration represented by that set of 5-cycle data. That is, the 5-cycle vehicle group may include within it several vehicle groupings, or specific vehicle model types, for which additional FTP/HFET data is available. The manufacturer would be able to use the MPG line to determine the fuel economy label adjustments for each of these model types with associated FTP/HFET test data. Fuller 5-cycle testing would be required for all vehicles represented by a vehicle group for which the 5-cycle fuel economy is below the tolerance bands. Section II further describes the level of these tolerance bands and how this concept would be implemented. A full discussion of our proposed methodology and results is contained in Section II.

2. Revised Label Format

To make the label more easily understood by consumers, we are also proposing changes to the fuel economy label format specified in the regulations. The proposed changes include updating the look of the label, simplifying its contents, and improving its graphics, among others. The purpose of these changes is to present the fuel economy information in a manner that is easier for the consumer to understand and use. The proposed changes are discussed in detail in Section IV.

3. Revised Comparable Vehicle Classes

The comparable vehicle classes are currently defined in EPA's fuel economy regulations. They are needed to fulfill the EPCA statutory requirement to provide fuel economy information about comparable vehicles on the label.[24] These classes were last revised in 1984. Since that time, there have been some significant changes to vehicle designs which warrant changes to the defined classes. Briefly, we are proposing to add SUV and Minivan classes, and to consolidate some classes which have become less prevalent in the market. This is discussed in more detail in Section V.

4. Minor Changes in Certain Test Procedures

We are proposing minor procedural changes in certain test procedures. First, the US06 drive cycle contains elements of both city and highway types of driving, yet the exhaust sample is collected in only one ''bag,'' yielding one overall fuel economy result. In order to more accurately reflect the city portion of the drive cycle into the city fuel economy estimate, and the highway portion of the US06 into the highway fuel economy estimate, we are proposing a revised test protocol that would require collecting the exhaust sample into two bags, thus providing separate results from the city and highway portions. This has the benefit of more accurately capturing how a vehicle's fuel economy would be impacted over the various types of driving reflected in the cycle, but with very minimal cost impact.

Second, today diesel vehicles are not required to run the cold FTP test since they are currently exempt from the cold carbon monoxide standard. We are proposing that diesel vehicles be required to run this test for 5-cycle fuel economy purposes.

Finally, the current cold FTP test gives manufacturers the option, but does not require them to, run the heater or defroster while performing this test at 20 degrees F. We expect that in most cases in the real world, consumers would indeed be running these accessories in colder temperatures, which will impact their fuel economy. We also understand that some, but not all, manufacturers today do run these accessories during the test. Therefore, to ensure this test most accurately reflects real-world conditions, and to ensure these conditions are run uniformly across manufacturers, we are seeking comment on requiring manufacturers to run the heater and defroster while performing the cold FTP test.

5. Other Fuel Economy-Related Topics

In addition to the proposed fuel economy label calculations and label formats, we are proposing a few other changes related to the fuel economy labels and annual fuel economy booklet. These topics are discussed in Section V.

D. Today's Proposal Does Not Impact or Change CAFE Test Procedures

Today's proposal does not alter the FTE and HFET driving cycles, the measurement techniques or the calculation methods used to determine CAFE. EPCA requires that CAFE be determined from the EPA test procedures in place as of 1975 (or procedures that give comparable results), which are the city and highway tests of today, with a few small adjustments for minor procedural changes that have occurred since 1975.[25] Today's proposal will not adjust the CAFE calculations; the new method for calculating fuel economy label estimates will fall under regulations that are separate from the CAFE regulations (currently, the regulations for calculating CAFE are in 40 CFR 600.501–85 through 513–91).

E. When Will the New Fuel Economy Estimates Take Effect?

We want the public to benefit from the improved information provided by the new fuel economy estimates as soon as possible. Therefore, we propose that these new regulations take effect with the 2008 model year, which will be available for sale at dealers in the fall of 2007. We believe this is the earliest possible date for implementation, since some manufacturers typically begin certifying model year 2008 vehicles as early as late 2006. We also encourage manufacturers to voluntarily utilize these new methods sooner, and are therefore proposing that manufacturers may voluntarily comply with the new regulations as soon as the final regulations are published.

F. How Will EPA Communicate to the Public the Transition Between the Old Label Values and New?

To ensure that the public understands the relationship between the old estimates and the new, EPA plans to conduct extensive public outreach concurrent with the implementation of a final rule. We will provide information about the new estimates and how to use them via web-based information, fact sheets, and other communication methods. This information will be designed to explain all aspects of any new calculation methods, including their impact on label estimates from previous model years.

G. Statutory Provisions and Legal Authority

1. EPCA

The statutory authority for today's proposal is provided by the Energy Policy and Conservation Act (EPCA). Most of the labeling provisions applicable to vehicle labeling and information are found at 49 U.S.C. 32908. This section restricts EPA's requirements for fuel economy labeling to automobiles rated at no more than 8,500 pounds gross vehicle weight. It requires manufacturers of automobiles to attach a fuel economy label to a prominent place on each automobile manufactured in a model year and also requires the dealers to maintain the label on the automobile.[26]

EPCA requires EPA to promulgate regulations to measure and calculate fuel economy.[27] To the extent practicable, EPCA requires that fuel

[24] See 49 U.S.C. 32908(b)(1)(C).

[25] See 49 U.S.C. 32904(c).

[26] See 49 U.S.C. 32908(b)(1).

[27] See 49 U.S.C. 32904(c).

economy tests be carried out with emissions tests performed under section 206 of the Clean Air Act (42 U.S.C. 7525).[28]

EPA's resulting fuel economy regulations are found in 40 CFR Part 600. EPA has broad discretion in determining how to measure and calculate fuel economy for purposes of labeling under 49 U.S.C. 32908(b).[29] The fact that EPA's current fuel economy labeling regulations includes the reporting of separate ''city'' and ''highway'' fuel economy is a result of a series of EPA regulations as discussed in Section I.A. above. Thus, in developing today's proposal (discussed in Section III below), we considered, but ultimately are not proposing, other methodologies for reporting fuel economy.

EPCA imposed some specific requirements for the information to be included on the fuel economy label.[30] Today's proposal retains these items:

a. The fuel economy of the automobile.

b. The estimated annual fuel cost of operating the automobile.

c. The range of fuel economy of comparable automobiles of all manufacturers.

d. A statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year.

e. The amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064).

f. Other information required or authorized by the Administrator that is related to the information required [within items a. through d.]

EPCA also defines ''fuel economy'' as the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by EPA.[31] Thus, today's proposal retains the requirement to report fuel economy as miles-per-gallon.

EPCA requires EPA to prepare a fuel economy booklet containing information that is ''simple and readily understandable.'' [32] It further instructs DOE to publish and distribute the booklet. EPA is required to ''prescribe regulations requiring dealers to make the booklet available to prospective buyers.'' [33] This booklet is more commonly known as the annual ''Fuel Economy Guide.''

EPCA also contains statutory provisions for average fuel economy (known widely as ''Corporate Average Fuel Economy,'' or CAFE).[34] Under these provisions, EPA is required to prescribe testing and calculation procedures to measure fuel economy for each model and calculate average fuel economy for a manufacturer, using the same procedures that were used for 1975 model year passenger automobiles (weighted 55 percent urban cycle and 45 percent highway cycle), or procedures that give comparable results.[35] This requirement does not apply to the fuel economy information manufacturers apply to the fuel economy label required in 49 U.S.C. 32908(b).[36]

EPA is also required to consult with the Federal Trade Commission (FTC), DOT and DOE in carrying out the fuel economy information requirements in EPCA.[37]

2. Energy Policy Act of 2005

Section 774 of the Energy Policy Act of 2005 (EPAct) directs EPA to ''update or revise the adjustment factors in sections 600.209–85 and 600.209–95, of the Code of Federal Regulations, CFR Part 600 (1995) Fuel Economy Regulations for 1977 and Later Model Year Automobiles to take into consideration higher speed limits, faster acceleration rates, variations in temperature, use of air conditioning, shorter city test cycle lengths, current reference fuels, and the use of other fuel depleting features.'' [38]

In today's proposal, the 5-cycle approach changes the adjustment factors by establishing a new method to calculate fuel economy estimates that uses fuel economy results from additional test procedures combined with a changed adjustment factor. The mpg-based approach uses the same test methods as the current fuel economy program (i.e., the FTP and HFET tests), but changes the adjustment factors applied to those test results. These options satisfy the EPAct provisions as follows.

First, the 5-cycle method proposed today directly includes the effects of higher speed limits, faster acceleration rates, variations in temperature, and use of air conditioning by including fuel economy measured during tests that incorporate these features. The mpg-based approach also takes these factors into consideration, but less directly, as it incorporates the effects of these factors by basing the adjustment factor on an analysis of data developed from the 5-cycle method. Under our proposal, we use the mpg-based approach as an interim option to establish an appropriate period of lead time for manufacturers. We also allow its continued use only where the average effects reflected under the mpg-based adjustments (of higher speed/acceleration, air conditioning, and cold temperature) on a specific vehicle configuration would be representative of those measured under actual 5-cycle testing.

Second, we interpret the statute's reference to ''shorter city test cycle lengths'' to mean shorter than the current FTP cycle used to determine city fuel economy. We have addressed that concern in the proposal by weighting in updated factors for ''cold starts'' and ''hot starts'' (where the engine is not warmed up or has been parked for a brief amount of time and then restarted) into the equation for determining city fuel economy. This simulates shorter city test cycle lengths where a vehicle's engine is more frequently shut down and restarted than in the current FTP test. Also, the US06 and SC03 test cycles are physically shorter in length than the FTP (the FTP is about 11 miles in length, whereas the US06 is about 8 miles, and the SC03 is about 3.6 miles.)

Third, we interpret the statutory reference to ''current reference fuels'' to mean the laboratory fuels used to perform the fuel economy tests, and that the underlying concern of Congress was that the high-quality lab fuels would give higher fuel economy than the typical fuel used by consumers. The quality of the laboratory test fuel is specified in EPA regulations for emission compliance.[39] The test gasoline fuel is roughly equivalent to premium, high-octane fuel available at the pump. It is necessary that all vehicles use the same grade of fuel to provide a level playing field for manufacturers to compare the emission compliance results to the federal emission standards, since certain fuel specifications can have an impact on tailpipe emissions. The impact of the higher-octane test fuel on fuel economy is less significant but there are other real-world fuel differences that can have a noticeable impact, as discussed in Section II. For instance, ethanol has a lower energy content than gasoline, and

[28] Id.

[29] EPCA places testing restrictions on corporate average fuel economy (CAFE), discussed below. Today's proposal does not impact those restrictions.

[30] See 49 U.S.C. 32908(b)(2)(A) through (F).

[31] See 49 U.S.C. 32901(a)(10).

[32] See 49 U.S.C. 32908(c).

[33] Id.

[34] See 49 U.S.C. 32902–32904.

[35] See 49 U.S.C. 32904(c).

[36] Id.

[37] See 49 U.S.C. 32908(f).

[38] See Pub. L. 109–58, 119 Stat. 835 (2005).

[39] See 40 CFR 86.113–94.

when blended with gasoline, with all other things being equal, will slightly lower fuel efficiency. Other seasonal variations in fuel composition (*e.g.*, oxygenates in winter fuel) may also cause a slight reduction in fuel economy. EPA is proposing an adjustment factor to account for fuel differences and other fuel-depleting features as described further in Section II.

3. Relationship of Today's Proposal With Other Statutes and Regulations

a. *Automobile Disclosure Act.* A provision in EPCA (at 49 U.S.C. 32908(b)(2)) allows the fuel economy information to be included on the window sticker label of vehicle manufacturing and price information required by the Automobile Disclosure Act at 15 U.S.C. 1232 (the so-called ''Monroni'' label.). To that end, the Federal Trade Commission issued a ''Fuel Guide'' concerning the fuel economy advertising for new automobiles, published in the **Federal Register** at 16 CFR Part 259. This guide refers back to EPA's fuel economy regulations and specifically to how manufacturers are permitted to advertise the city and highway fuel economy of their vehicles.

b. *Internal Revenue Code.* This code contains the provisions governing the administration of the Gas Guzzler Tax.[40] It contains the table of applicable taxes and defines which vehicles are subject to the taxes. The IRS code specifies that the fuel economy to be used to assess the amount of tax will be the combined city and highway fuel economy as determined by using the procedures in place in 1975, or procedures that give comparable results (similar to EPCA's requirements for determining CAFE). Today's proposal does not impact these procedures.

c. *Clean Air Act.* Reference is made in EPCA to the Clean Air Act statute. Specifically, EPCA states that fuel economy shall to the extent practicable include the emissions tests required under Section 206 of the Clean Air Act.[41] Today's proposal incorporates three additional types of emissions tests required under the Clean Air Act for fuel economy testing, as discussed in detail in Section II. We also propose to make several changes to existing emissions tests. These changes are being proposed under the statutory authority of Section 206 of the Clean Air Act, which permits the Administrator to define, and to revise from time to time, the test procedures used to determine compliance with applicable emission standards.

d. *Additional Provisions in the Energy Policy Act of 2005 and Transportation Equity Act of 2005.* This action is expected to have no impact on the alternative motor vehicle federal income tax credits the Internal Revenue Service (IRS) is establishing under Section 1341 of the Energy Policy Act of 2005. IRS is in the process of preparing the final guidance for these new federal income tax credits for consumers who purchase new hybrid, diesel, dedicated alternative fuel, or fuel cell vehicles beginning on January 1, 2006. The Energy Policy Act of 2005 requires EPA to coordinate with and support IRS' implementation of these new tax credits, and EPA is providing input on a number of technical issues. EPA anticipates that the fuel economy values used to help determine tax credit eligibility for light-duty vehicles will be ''unadjusted'' laboratory city fuel economy test values. Accordingly, the changes being proposed today are anticipated to have no impact on the tax credit program.

Similarly, this action is expected to have no impact on the ''HOV Facilities'' regulations EPA is establishing under section 1121 of the Transportation Equity Act of 2005. EPA is in the process of developing proposed regulations to identify low emission and energy-efficient vehicles for the purpose of assisting states administering high-occupancy lane transportation plans. EPA anticipates that the fuel economy values used to identify these vehicles will be the ''unadjusted'' FTP-based fuel economy test values. Accordingly, the changes proposed today are anticipated to have no impact on the HOV facilities program.

II. Description of the Proposed Fuel Economy Label Methodology

The current fuel economy label values utilize measured fuel economy over city and highway driving cycles and adjust these values downward by 10 and 22 percent, respectively, to account for a variety of factors not addressed in EPA's vehicle test procedures. These factors include differences between the way vehicles are driven on the road and over the test cycles, air conditioning use, widely varying ambient temperature and humidity, varying trip lengths, wind, precipitation, rough road conditions, hills, etc. The purpose of the new formulae for city and highway fuel economy labels is to widen the base for the labels to include actual vehicle testing over a wider range of driving patterns and ambient conditions than is currently covered by the FTP and HFET tests.

For example, vehicles are often driven more aggressively and at higher speeds than is represented in the FTP and HFET tests. The incorporation of measured fuel economy over the US06 test cycle into the fuel economy label values would make the label values more realistic. Drivers often use air conditioning in warm, humid conditions, while the air conditioner is turned off during the FTP and HFET tests. The incorporation of measured fuel economy over the SC03 test cycle into the fuel economy label values would reflect the added fuel needed to operate the air conditioning system. Vehicles also often are driven at temperatures below 75 degrees Fahrenheit (F), at which the FTP and HFET tests are performed. The incorporation of measured fuel economy over the cold temperature FTP test into the fuel economy label values would reflect the additional fuel needed to start up a cold engine at colder temperatures.

The proposed vehicle-specific, 5-cycle approach to fuel economy label estimation would incorporate estimates of the fuel efficiency of each vehicle during high speed, aggressive driving, air conditioning operation and cold temperatures into each vehicle's fuel economy label. It would combine measured fuel economy over the two current fuel economy tests, the FTP and HFET, as well as that over the US06, SC03 and cold FTP tests into estimates of city and highway fuel economy for labeling purposes. The test results from each cycle (and in some cases, portions of cycles or emission ''bags'')[42] would be weighted to represent the contribution of each cycle's attributes to onroad driving and fuel consumption. The vehicle-specific, 5-cycle approach would eliminate the need to account for the effect of aggressive driving, air conditioning use and colder temperatures on fuel economy through generic factors (as done today) which may not reflect that particular vehicle's sensitivity to these factors. A generic adjustment would still be necessary to

[40] See 26 U.S.C. 4064.

[41] See 49 U.S.C. 32904(c).

[42] The FTP consists of two parts, referred to in the regulations as the ''cold start'' test and the ''hot start'' test. Each of these parts is divided into two periods, or ''phases': A ''transient'' phase and a ''stabilized'' phase. Because the stabilized phase of the hot start test is assumed to be identical to the stabilized phase of the cold start test, only the cold start stabilized phase is typically run. These ''phases'' are often called ''bags,'' terminology that results from the sample bags in which the exhaust samples are collected. The phases are run in the following order: Cold start transient (Bag 1), cold start stabilized (Bag 2), and hot start transient (Bag 3).

account for factors not addressed by any of the five dynamometer tests. The magnitude of such an adjustment is comparable to today's 10 and 22 percent generic adjustments. Overall, under the vehicle specific 5-cycle approach, each vehicle's label fuel economy would better reflect the capabilities of that vehicle on the road.

Currently, the US06, SC03 and cold FTP tests are only performed on a subset of new vehicle configurations. In contrast, for fuel economy purposes, FTP and HFET tests are performed on many more vehicle configurations. In order to minimize the number of additional US06, SC03 and cold FTP tests resulting from this proposal, we are proposing that manufacturers be allowed to estimate the fuel economy over these three tests for vehicle configurations that are not normally tested for emission compliance purposes using the fuel economy measurements that are normally available. This is currently done on a more limited basis for both the FTP and HFET, and is referred to as analytically derived fuel economy (ADFE).[43] We are also proposing that manufacturers be allowed to use the interim approach to fuel economy label estimation, the mpg-based approach, indefinitely when the available 5-cycle fuel economy data indicate that a vehicle's specific 5-cycle fuel economy is very close to that estimated by the mpg-based curve.

Even with these policies, we expect that some manufacturers would have to perform some additional US06, SC03, or cold FTP tests to address differences in vehicle designs which are not covered by the analytical derivation methodology. Other manufacturers may decide to perform additional tests simply to improve accuracy over the analytical derivation methodology. Depending on how manufacturers choose to apply this method, this additional testing could involve the construction of additional test facilities. (Test burden issues are discussed further in Section VI of this preamble.) Therefore, in order to allow sufficient lead-time for the construction of these facilities, we are proposing to allow manufacturers the option of using an alternative, interim set of adjustments through the 2010 model year until the 5-cycle approach becomes mandatory with the 2011 model year. However, a manufacturer can still use the 5-cycle formula prior to the 2011 model year for specific vehicle models, if it so desires.

The interim set of adjustments is termed the ''mpg-based'' adjustment. (See Figure II–1 in the following section for a graphical depiction of these adjustments.) The mpg-based approach is a sliding scale of adjustments which varies according to a vehicle's measured fuel economy over the FTP and HFET tests. The mpg-based adjustment factors were developed from applying the 5-cycle formulae to 423 recent model year vehicles and determining the average difference between the 5-cycle and current city and highway fuel economies. Thus, because the data used to develop the average adjustment factors were derived from 5-cycle fuel economies, the mpg-based adjustment factors include the effect of high speeds, aggressive driving, air conditioning, and colder temperatures. However, they do so based on the impact of these factors on the average vehicle, not the individual vehicle, which is the case with the 5-cycle formulae. For example, for vehicles with FTP fuel economy of 20–30 mpg, the mpg-based approach would adjust the FTP fuel economy downward by 22–24 percent, versus today's 10 percent downward adjustment. Thus, city fuel economy label values under the mpg-based approach tend to be about 13–15 percent lower than today's label values. For vehicles with HFET fuel economy of 25–35 mpg, the mpg-based approach would adjust the HFET fuel economy downward by 29 percent, versus today's 22 percent downward adjustment. Thus, highway fuel economy label values under the mpg-based approach would tend to be about 9 percent lower than today's label values.

As mentioned above, the mpg-based equations described above were developed from the 5-cycle fuel economy estimates for 423 2003–2005 model year vehicles. We propose to update the mpg-based curves periodically using all of the available 5-cycle fuel economy estimates for the previous three or more model years. These revised mpg-based equations would be issued through the publication of an EPA guidance document. EPA would publish the mpg-based equations by January 1 of the calendar year prior to the model year to which the equations first apply (e.g., for model year 2010 fuel economy calculations the equations would be made available before January 1, 2009). In order to keep the mpg-based equations up-to-date and based on recent technology vehicles, EPA would update these equations periodically, but no more than on an annual basis. However, rather than publish the equations applicable to 2008 model year vehicles via guidance, the proposed regulations contain the equations that would be applicable to 2008 model year vehicles, as well as the components of the equations to be utilized for future model year vehicles. We request comment on this updating of the mpg-based equations.

In addition to proposing the mpg-based adjustment factors for the 2008–2010 model years, as mentioned above, we propose to allow use of this method of label estimation to be used for 2011 and later model years for those vehicles which meet certain criteria (discussed in detail below) that indicate that the full 5-cycle testing would not likely result in significantly different fuel economy label values. Each year, a number of vehicles are tested over all five dynamometer test cycles for emission certification purposes (i.e., emission data vehicles). The fuel economy data for the five dynamometer test cycles for each emission data vehicle can be inserted into the 5-cycle formulae and the 5-cycle city and highway fuel economy values determined. Emission data vehicles also undergo testing over the FTP and HFET. Thus, the mpg-based city and highway fuel economy values for each emission data vehicle can also be determined using the available FTP and HFET fuel economy values. The 5-cycle city and highway fuel economy values can be compared to the mpg-based city and highway fuel economy values, respectively, for each emission data vehicle.

The mpg-based line represents the effects of high speed, high acceleration, air conditioning, and colder temperatures of the average new vehicle. Therefore, we believe that it is reasonable to allow continued use of the mpg-based line when the available 5-cycle fuel economy data (from emissions certification testing) indicates that the particular vehicle design reflects at least these average effects. To accomplish this, we defined the lower bound of a tolerance band around the mpg-based line as the criteria for whether the mpg-based line could be used or whether 5-cycle testing would be required. We chose four and five percent as the tolerance bands for the 5-cycle city and 5-cycle highway fuel economy values, respectively. Mathematically, the tolerance line is defined by $Y \times$ mpg-based fuel economy, where Y is 0.96 for city fuel economy and 0.95 for highway fuel economy. In other words, if the 5-cycle city fuel economy value is greater than 0.96 times the mpg-based city fuel economy, all the vehicle configurations

[43] EPA's current policy for analytically derived fuel economy estimates for the FTP and HFET tests is contained in the EPA memorandum entitled, ''Updated Analytically Derived Fuel Economy (ADFE) Policy for 2005 Model Year,'' March 11, 2004, CCD–04–06 (LDV/LDT).

represented by the emission data vehicle (i.e., all vehicles within the vehicle test group) would be eligible to use the mpg-based approach. Similarly, when the 5-cycle highway fuel economy is less than the mpg-based highway fuel economy minus five percent, all vehicle configurations represented by the emission data vehicle would be required to use the vehicle-specific 5-cycle approach. This could be done using ADFE estimates, when appropriate. This approach is appropriate because those vehicles above the upper tolerance band that used the mpg-based line would simply be reducing their fuel economy down to the average level, even though the 5-cycle data indicated better than average performance was likely for that vehicle group. Because of the better-than-average performance, we expect that most manufacturers will want to do complete 5-cycle testing for vehicles likely to be above the upper tolerance band. However, we request comment on whether there may be some inherent variability regarding all outliers above *and* below the tolerance band that would make it desirable to require 5-cycle testing in all of these cases.

If the 5-cycle city fuel economy fell below the mpg-based city fuel economy by more than four percent, but the 5-cycle highway fuel economy did not fall below the mpg-based highway fuel economy by more than five percent, all the vehicle configurations represented by the emission data vehicle would be required to use the vehicle-specific 5-cycle approach for both city and highway fuel economy, since fuel economy values for all five cycles are important in estimating 5-cycle city fuel economy. However, if the 5-cycle highway fuel economy was less than the mpg-based highway fuel economy by more than five percent, but the 5-cycle city fuel economy was not more than four percent lower than the mpg-based city fuel economy, all the vehicle configurations represented by the emission data vehicle would use mpg-based approach to estimate the city fuel economy label. For highway label estimation, all the vehicle configurations represented by the emission data vehicle would use an approximate 5-cycle formula for highway fuel economy which includes vehicle-specific fuel economy measurements for the FTP, HFET and US06 tests, but the values for the SC03 and cold FTP tests could be estimated based on relationships developed from other vehicles. This is appropriate because the impact of the cold FTP test on highway fuel economy is not vehicle-specific, but modeled. Also the impact of the SC03 test on highway fuel economy is very small, particularly compared to that for the US06 test.

The proposed criteria for long term use of the mpg-based approach (5-cycle city fuel economy above −4.0 percent and 5-cycle highway fuel economy above −5.0 percent) are based on the balance of three factors. One, we designed them to be sufficiently large so that simple test-to-test variability would not cause an emission data vehicle to fail the criteria. This was a greater concern for the highway fuel economy comparison, due to the dominance of the US06 fuel economy (which inherently has greater test-to-test variability than the other tests) in the 5-cycle formula. Two, we desired to minimize the potential error in the fuel economy label. Label fuel economy values are rounded to the nearest one mpg. Thus, we desired to keep the difference between the 5-cycle and mpg-based fuel economy values within roughly one mpg, if possible. Three, we desired to avoid additional fuel economy testing that had little impact on the label values.

The four percent tolerance band for city fuel economy is equivalent to roughly 0.6–0.7 mpg on average. Due to the contribution of a number of independent fuel economy measurements in the 5-cycle city fuel economy formula, the effect of test-to-test variability should be much lower than 4.0 percent. Based on the 5-cycle test results of 423 recent model year vehicles, we estimate that 90 percent of all emission data vehicles would meet the 4.0 percent. Thus, we believe that this criterion adequately satisfies the three factors mentioned above.

The five percent tolerance band for highway fuel economy is equivalent to roughly 1.1 mpg on average. Thus, it is slightly higher than the typical error associated with rounding. However, due to the dominant contribution of the US06 fuel economy in the 5-cycle highway fuel economy formula, and the fact that this test tends to have relatively high variability, we are concerned that test-to-test variability could be on the order of 3.0 percent in the 5-cycle highway fuel economy formula. We estimate that 75 percent of all emission data vehicles would meet the 5.0 percent. Thus, again, we believe that this criterion adequately satisfies the three factors mentioned above.

Overall, allowing the continued use of the mpg-based approach would reduce the number of additional SC03 and cold FTP tests by about 90 percent and reduce the number of additional US06 tests by about 75 percent indefinitely. We request comment on the continued use of the mpg-based approach beyond the 2010 model year and on the 4.0 and 5.0 percent criteria for its use.

Section II.A presents the proposed interim mpg-based formulae and the proposed vehicle-specific 5-cycle formulae for city and highway fuel economy label values. Section II.B describes how these formulae would be applied to develop labels for specific grouping of vehicles. Section II.C describes how the 5-cycle formulae were derived. Section II.D describes how the mpg-based formulae were derived. Section II.E describes how the current city and highway fuel economy values would change under the proposed formulae.

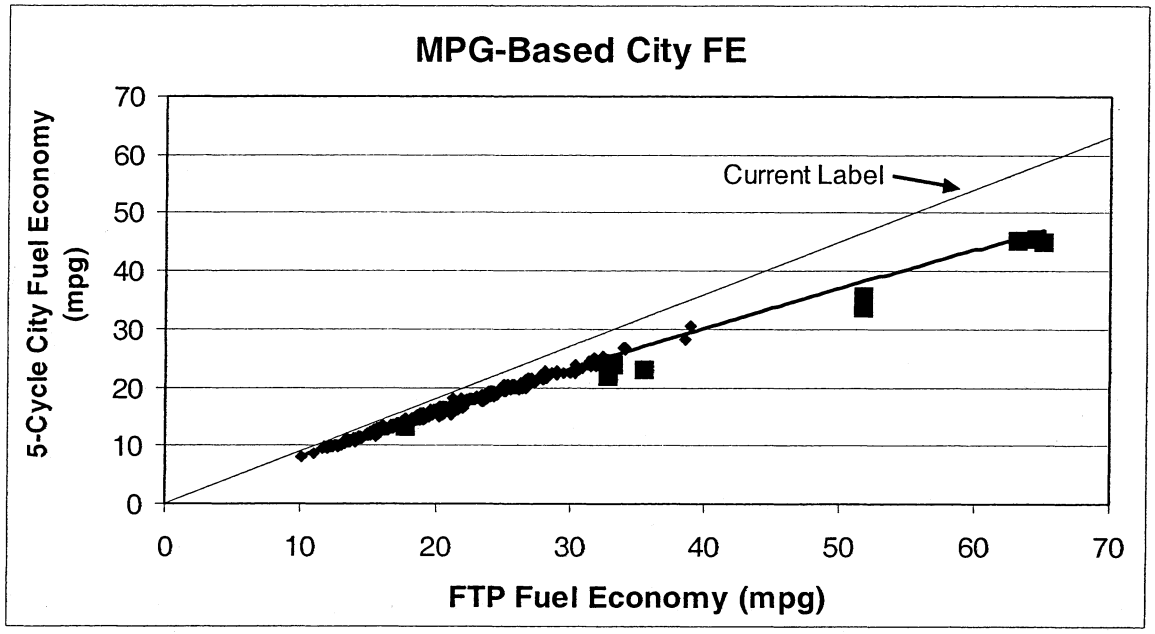
A. Proposed Fuel Economy Label Formulae

Currently, manufacturers test their vehicles over two dynamometer tests in order to develop their fuel economy label values: the FTP or city test and the HFET or highway test. Fuel economies measured over these two tests are multiplied by 0.90 and 0.78, respectively. These ''adjusted'' fuel economies are then sales-weighted using procedures outlined in Subpart D of Part 600 of Title 40 of the Code of Federal Regulations (CFR) to develop fuel economy label values by model type.

Under today's proposal, we would replace the 0.90 and 0.78 factors with new factors which are not simply constants. For model years 2008–2010, a manufacturer would have the option of using two distinct methodologies to calculate the city and highway fuel economy values for any specific test vehicle. One approach is called the mpg-based approach or formula, since the city and highway label values are based on the fuel economy (or MPG) measured over the FTP and HFET, respectively. The other approach is called the vehicle-specific 5-cycle approach, since the city and highway label values are based on the test results of five test cycles, the FTP, HFET, US06, SC03 and cold FTP. Beginning with the 2011 model year, we propose that manufacturers would use the vehicle-specific 5-cycle method, but that the mpg-based approach could still be used by qualifying vehicles. Below we present the specific equations under the two approaches which would be used to convert fuel economies measured over the dynamometer cycles into city and highway fuel economy values prior to sales weighting. We are not proposing any changes to the methods for combining city and highway fuel economy values for specific vehicles into label values for a model type.

The formulae for the 5-cycle approach are, as indicated by its name, based on the fuel economy measurements over the five test cycles (FTP, HFET, US06, SC03 and cold FTP). Both approaches also include an additional downward adjustment to represent effects impossible to incorporate in laboratory dynamometer testing. However, the formulae for the mpg-based approach are also based on fuel economy measurements over the five test cycles. The difference is the set of 5-cycle fuel economy measurements that are used. Under the vehicle-specific 5-cycle approach, the fuel economy measurements over the 5 dynamometer test cycles would all be performed on (or estimated for) a specific vehicle in the current model year. Under the mpg-based approach, historic fuel economy data over the 5 test cycles would have been analyzed to produce a fleet-wide average relationship between (1) FTP fuel economy and 5-cycle city fuel economy, and (2) HFET fuel economy and 5-cycle highway fuel economy. Under the mpg-based approach, a specific vehicle's city and highway fuel economy labels are based on this fleet-wide average relationship, as opposed to that vehicle's own results over the 5 test cycles. In other words, every vehicle with the same measured FTP fuel economy would receive the same city fuel economy label value. Likewise, every vehicle with the same measured HFET fuel economy would receive the same highway fuel economy label value. Figure II–1 shows the 5-cycle city fuel economy for 423 recent model year vehicles and the mpg-based city fuel curve which has been developed from these data. The horizontal axis is the measured FTP fuel economy.

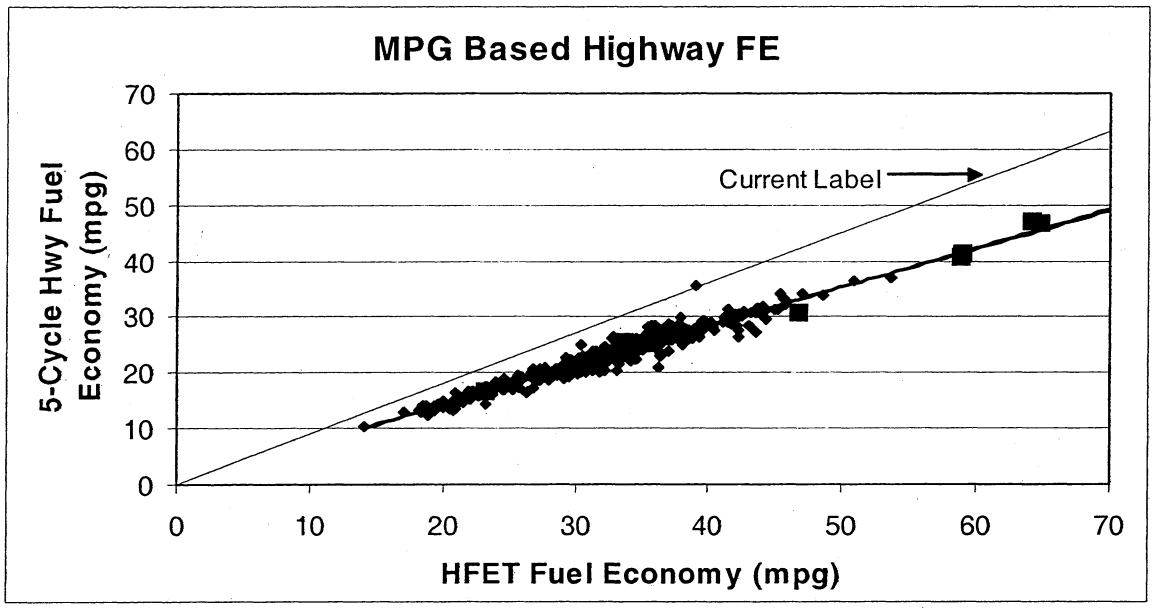
Figure II-1. – MPG-Based City Fuel Economy Curve



Application of the 5-cycle approach to these vehicles would have produced the city fuel economy values indicated by the diamonds in the plot. (The nine hybrid vehicles are indicated by large squares.) Application of the mpg-based formula to these vehicles would have produced city fuel economy values by reading a number off of the curved line in the plot.

Figure II–2 shows the 5-cycle highway fuel economy for the same 423 recent model year vehicles and the mpg-based highway fuel economies which have been developed from these data. The horizontal axis is the measured HFET fuel economy.

Figure II-2. – MPG-Based Highway Fuel Economy Curve



Both Figure II–1 and II–2 include several data points which are represented by large squares. These are vehicles which incorporate hybrid technology. Hybrids appear to fall well below the mpg-based curve for city fuel economy, but not for highway fuel economy. This issue will be discussed in more detail below.

Given that both approaches utilize the 5-cycle fuel economy formulae in some fashion, it is useful to begin this section with a description of how the fuel economy measured over the 5 test cycles are combined to represent onroad city and highway fuel economy. Then we will describe how the fleet-average formulae for the mpg-based approach were derived from these 5-cycle fuel economy estimates.

The 5-cycle formulae are derived from extensive data on real-world driving conditions, such as driving activity, temperatures, air conditioner operation, trip length, and other factors. In this section and in the Draft Technical Support Document, we fully describe the basis for developing these formulae. We seek comment on all aspects of the formulae and the underlying data upon which they are based. We also encourage interested parties to submit any additional data that would be relevant in our final analysis. Further, we want to ensure the 5-cycle approach continues in future years to reflect updated conditions impacting real-world fuel economy. Therefore, we encourage the public to submit any such data in the future so that EPA may assess such new information and evaluate the need for changes to this approach over time.

Since our goal is to develop a consistent, objective approach that applies to all vehicles, we have assumed that all types of vehicles are driven and maintained similarly, and we have proposed to weight the five driving cycles and apply non-dynomometer adjustments in the same way for all types of vehicles. However, if data showed that a specific type of vehicle is driven or maintained very differently, and this impacted fuel economy significantly (*e.g.*, an unusually low incidence of aggressive driving, A/C usage, etc.), then one might consider different weights or adjustment factors on this basis. We seek comment on any data that would inform whether unique weighting factors or non-dynomometer adjustments should be considered for specific vehicle technologies (*e.g.*, hybrids or diesels). For example, hybrids may be purchased preferentially by people whose driving patterns take advantage of their performance characteristics, and hybrid owners may be more conscious of driving techniques (such as mild braking) that improve fuel economy. Even if this were the case today, this difference would not necessarily persist as hybrids become more prevalent in the fleet. Moreover, it is not clear how such vehicle technology-specific factors can or should be reflected in EPA's fuel economy test methods or calculations. We seek comment on the contribution of such factors to the on-road fuel economy experience of consumers, and on the relevance of these factors to the fuel economy label. We also seek comment on the extent to which such unique factors might reduce the perceived objectivity of the fuel economy estimates if they presume differences in driving behavior.

1. MPG-Based Approach (Available in 2008–2010 Model Years)

Under the mpg-based approach, the city fuel economy value would be calculated as follows:

Equation 1:

$$\text{City FE} = \frac{1}{\left(0.002549 + \frac{1.2259}{\text{FTP FE}}\right)}$$

where

FTP FE = the fuel economy in miles per gallon of fuel during the FTP test conducted at an ambient temperature of 75 °F.

This value is normally a sales-weighted average of the vehicle models included in the ''fuel economy grouping'' (e.g., model type) as defined in 40 CFR 600.002–93.

Likewise, the highway fuel economy value would be calculated as follows:

Equation 2:

$$\text{Highway FE} = \frac{1}{\left(0.000308 + \frac{1.4030}{\text{HFET FE}}\right)}$$

where

HFET FE = fuel economy in mile per gallon over the HFET test.

This value is normally a sales-weighted average of the vehicle models included in the ''fuel economy grouping'' (e.g., model type) as defined in 40 CFR 600.002–93.

The rationale for the various constants in Equations (1) and (2) is described in Section II.B.

2. Vehicle-Specific 5-Cycle Approach (Applicable to 2011 and Later Model Years and Optional in Prior Model Years)

Under the vehicle-specific 5-cycle approach, the city fuel economy value would be calculated as follows:

$$\text{City FE} = 0.89 \times \frac{1}{(\text{Start FC} + \text{Running FC})}, \text{ where}$$

$$\text{StartFC (gallons per mile)} = 0.330 \times \left(\frac{(0.76 \times \text{StartFuel}_{75} + 0.24 \times \text{StartFuel}_{20})}{3.5} \right)$$

where,

$$\text{Start Fuel}_x \text{ for vehicles tested over a 3-bag FTP} = \frac{3.59}{\text{Bag 1 FE}_x} - \frac{3.59}{\text{Bag 3 FE}_x}$$

or,

$$\text{Start Fuel}_x \text{ for vehicles tested over a 4-bag FTP} = \frac{7.5}{\left(\frac{3.59}{\text{Bag 1 FE}_x} + \frac{3.91}{\text{Bag 2 FE}_x} \right)} - \frac{7.5}{\left(\frac{3.59}{\text{Bag 3 FE}_x} + \frac{3.91}{\text{Bag 4 FE}_x} \right)}$$

where

Bag y FE_x = the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75 ° or 20°

F. The rationale for the various constants in the equations is described below in Section II.B. Likewise,

$$\text{Running FC} = 0.70 \times \left[\frac{0.48}{\text{Bag } 2_{75} \text{ FE}} + \frac{0.41}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.11}{\text{US06 City FE}} \right] + 0.30 \times \left[\frac{0.5}{\text{Bag } 2_{20} \text{ FE}} + \frac{0.5}{\text{Bag } 2_{20} \text{ FE}} \right] + 0.133 \times \frac{21.5}{19.9} \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 2_{75} \text{ FE}} \right) \right]$$

where

US06 FE = fuel economy in mile per gallon over the US06 test,

HFET FE = fuel economy in mile per gallon over the HFET test,

SC03 FE = fuel economy in mile per gallon over the SC03 test.

Vehicles tested over a 4-bag FTP would substitute the fuel economy over Bag 4 for Bag 2 in the above equation.

Under the vehicle-specific 5-cycle formula, the highway fuel economy value would be calculated as follows:

$$\text{Highway FE} = 0.89 \times \frac{1}{\text{Start FC} + \text{Running FC}}, \text{ where}$$

$$\text{StartFC (gallons per mile)} = 0.330 \times \left(\frac{0.76 \times \text{StartFuel}_{75} + 0.24 \times \text{StartFuel}_{20}}{60} \right)$$

$$\text{Running FC} = (1.012) \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}} \right] + 0.133 \times 0.377 \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 2_{75} \text{ FE}} \right) \right]$$

where the various symbols have the same definitions as described under the formula for the vehicle-specific 5-cycle city fuel economy value.

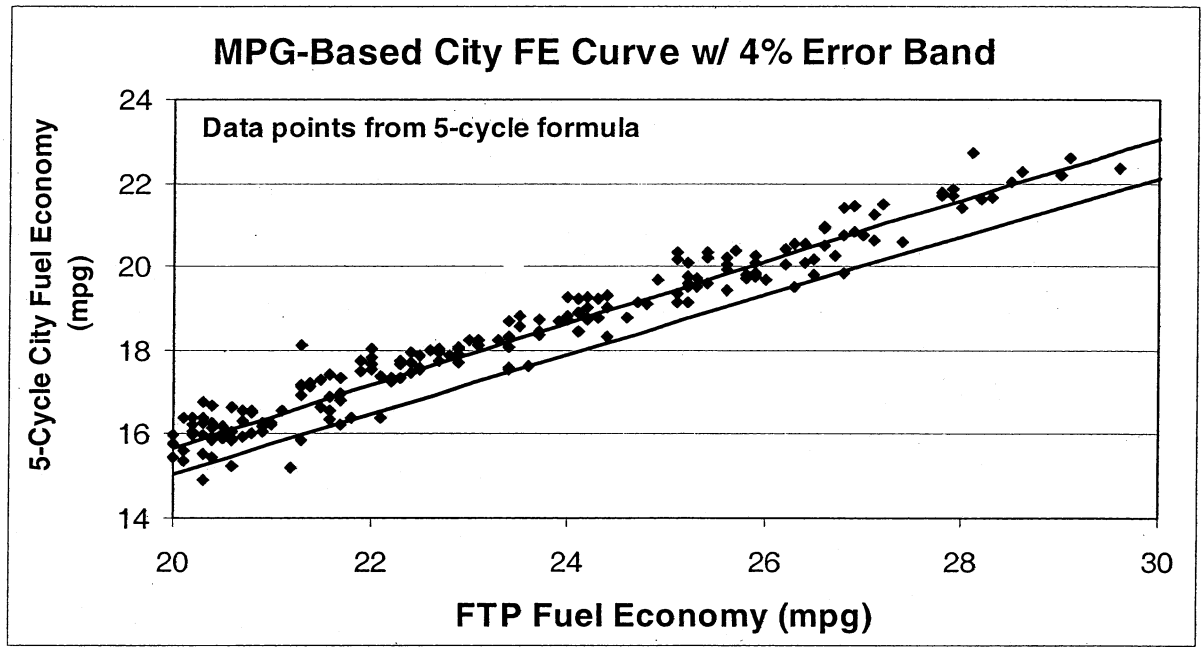
B. Application of the Formulae To Develop Fuel Economy Labels for Specific Vehicles

We are not proposing any major changes to the way that vehicle configurations are grouped for fuel economy labeling purposes. For model years 2008–2010, when the mpg-based formulae are applicable, there would be no change in the procedure by which specific vehicle labels are developed.[44] Since the mpg-based formulae are based solely on the current fuel economy test cycles, no additional tests would need to be conducted. Only the effective adjustment factors would be modified.

Starting with the 2011 model year, vehicle manufacturers would first utilize their available 5-cycle fuel economy testing of emission data vehicles to determine which test groups could utilize the mpg-based approach and which would have to use the vehicle-specific 5-cycle approach. The test groups for which their emission data vehicles passed the 4.0 percent and 5.0 percent criteria described above would face no additional testing requirements. Just as in 2008–2010, the mpg-based formulae would be applied to fuel economy values measured over the FTP and HFET already being performed and city and highway label values determined.

Figure II–3 shows how the 4.0 percent criterion would work for city fuel economy.

Figure II-3. – MPG-Based City Fuel Economy Curve with +/-4 Percent Tolerance Band



The upper line in the figure is the mpg-based formula for city fuel economy. The lower line represents a difference of 4.0 percent from city fuel economy based on the mpg-based formula. The points shown in Figure II–3 represent city fuel economy of emission data vehicles estimated by the 5-cycle fuel economy formula. The model types represented by emission data vehicles whose 5-cycle city fuel economy values fall above the lower line would be allowed to use the mpg-based approach for that model year. The model types represented by emission data vehicles whose 5-cycle city fuel economy values fall below the lower bounding line would be required to use the 5-cycle approach for that model year. Implicit in this proposal is that manufacturers would be allowed to use the mpg-based approach for a particular test group if the 5-cycle fuel economy for an emission data vehicle exceeded the mpg-based curve by more than the 4.0 or 5.0 percent criteria on the high side, since this would result in a lower fuel economy label value.

The test groups for which their emission data vehicles did not pass the 4.0 percent and 5.0 percent criteria described above could face some additional testing requirements. All the vehicle sub-configurations contained in these test groups would require fuel economy values over all five cycles for

[44] See 40 CFR 600 and relevant EPA guidance.

use in the 5-cycle city and highway fuel economy formulae. The city and highway label values produced by the 5-cycle fuel economy formulae would then be averaged and sales-weighted just as they are today. However, the fuel economy values over the five test cycles could be generated in either of two ways in most instances. One way would be to test the vehicle over the US06, SC03 and cold FTP tests (the FTP and HFET tests already being performed under current requirements). The other way would be estimate fuel economy values over the US06, SC03 and cold FTP tests analytically (i.e., ADFEs) from testing of a similar vehicle over these three cycles. Specifically, we propose to allow manufacturers to estimate the effect of differences in inertial test weight, road load horsepower and N/V ratio (the ratio of engine revolutions to vehicle speed when the vehicle is in its highest gear). A procedure to estimate the effect of these three vehicle parameters on FTP and HFET fuel economy has already been developed. We plan to work with manufacturers to develop analogous formulae for the US06, SC03 and cold FTP tests. We would implement these estimation procedures using agency guidance, as is currently done for FTP and HFET fuel economy.

It is possible for the 5-cycle fuel economy values to meet the above criteria for either city or highway fuel economy, but not the other. If the 5-cycle fuel economy values for a specific emission data vehicle are more than four percent below the mpg-based estimate for city fuel economy, but no more than five percent below the mpg-based estimate for highway fuel economy, all the vehicle configurations represented by that emission data vehicle would be required to use the 5-cycle formulae in complying with the fuel economy label requirements for both city and highway fuel economy. All five cycles play a significant role in the 5-cycle city fuel economy formula. Once the five tests have been performed for the city estimate, there is little reason not to use the same information to derive the highway fuel economy estimate.

We propose a different approach for the opposite situation. If the 5-cycle fuel economy values for a specific emission data vehicle are no more than four percent below the mpg-based estimate for city fuel economy, but more than five percent below the mpg-based estimate for highway fuel economy, all the vehicle configurations represented by that emission data vehicle would be allowed to use the mpg-based formulae in deriving the city fuel economy label value. The highway fuel economy value, however, would be based on an alternative, simplified 5-cycle formula as opposed to the full 5-cycle highway fuel economy formula. This alternative 5-cycle highway formula would be based on fuel economy values over the FTP, HFET and US06 tests. The impact of the SC03 and cold FTP tests is relatively small in the 5-cycle highway fuel economy formula, as explained in the Draft Technical Support Document.

This approach requires that we develop a simplified 5-cycle highway fuel economy formula which is consistent with the full 5-cycle formula. We developed this simplified formula using estimates of the average impact of the SC03 and cold FTP test results on 5-cycle highway fuel economy. In both cases, we estimated this average impact by regressing the impact of these test cycles on the 5-cycle highway fuel economy for the 423 vehicles in our certification database against fuel economy values which would be available from FTP, HFET and US06 testing. This analysis (described in detail in the Draft Technical Support Document) results in the following alternative calculation for highway fuel economy.

$$\text{Alternative Highway FE} = 0.89 \times \frac{1}{\text{Start FC} + \text{Running FC}}, \text{ where}$$

$$\text{StartFC} = 0.33 \times \frac{\left(0.004774 + 1.1377 \times \text{StartFuel}_{75}\right)}{60.0}, \text{ where}$$

$$\text{StartFuel}_{75} = 3.59 \times \left(\frac{1}{\text{Bag 1 FE}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}}\right), \text{ and}$$

$$\text{Running FC} = \left[1.0 + \left(0.04 \times 0.3\right)\right] \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}}\right] + \left[0.377 \times 0.133 \times \left(0.004254 + \frac{0.15931}{\text{US06 FE}}\right)\right]$$

We expect that the continued use of the mpg-based approach and the development of analytical estimation procedures for US06, SC03 and cold FTP fuel economy would allow manufacturers to avoid the vast majority of additional tests that would have been required if every vehicle currently tested over the FTP and HFET tests had to be tested over the US06, SC03 and cold FTP tests. The option to use the mpg-based approach after 2010 should alone eliminate 90 percent of the potential need for additional SC03 and cold FTP testing and 75 percent of the potential need for US06 testing. At the same time, we expect that there would be some need for additional testing when the available estimation procedures mentioned above do not apply. For example, the current estimation procedures for FTP and HFET fuel economy address changes in axle ratio, tractive road load horsepower and inertia test weight. Differences involving changes in transmission design, engine displacement, turbo-charging, etc., require actual testing. We expect that a similar situation would exist with the estimation of US06, SC03 and cold FTP fuel economy.

We request comment on the appropriateness of the continued use of

the mpg-based approach beyond the 2010 model year. We also request comment on the appropriateness of the 4.0 and 5.0 percent tolerance bands for city and highway fuel economy, respectively. We also seek comment on alternative approaches that may employ concepts similar to the tolerance band, or other ways of extrapolating fuel economy test results to a broader group of vehicle configurations. We specifically request comment on an approach which would employ tighter criteria (*e.g.*, a tolerance of 3 percent) that would allow the use of the mpg-based approach beyond 2010 model year, but which would include other aspects which would avoid full 5-cycle testing of all the model types which failed to pass the criteria. For example, failing the initial criteria might require the manufacturer to generate fuel economy data over the US06, the least expensive of the three additional cycles. City and highway fuel economy values could then be calculated using three cycles (the FTP, HFET, and US06), and tested with additional criteria (*e.g.*, comparison to a tolerance band around the appropriately generated mpg-based line) to assess whether the mpg-based approach could be used or whether full 5-cycle testing would be required.

C. Derivation of the Proposed 5-cycle Fuel Economy Formulae

1. Five-Cycle Fuel Economy Estimates

The purpose of the 5-cycle fuel economy formulae is to best represent city and highway fuel economy in the U.S. using the test results from the 5 test cycles. To the fullest extent possible, we desire to account for the effect of seasonal and geographical variations on automotive fuel economy, as well as the different driving habits of individual drivers. As described in Section I., we chose to base the fuel economy label values on 5 vehicle emission and fuel economy tests which are already being performed. This maximizes the use of fuel economy information that is already currently being collected, while at the same time minimizes the costs associated with the proposal, as described in more detail below in Section VI. The five current emission and fuel economy tests and their key aspects are described below in Table II–1. Actual second by second descriptions of these driving cycles can be found in Section 86 of Title 40 of the Code of Federal Regulations.

TABLE II–1.—KEY FEATURES OF THE FIVE CURRENT EMISSION AND FUEL ECONOMY TESTS

Test	Driving	Ambient temperature	Engine start	Accessories
FTP	Low speed	75 °F	Cold and hot	None.
HFET	Mid-speed	75 °F	Hot	None.
US06	Aggressive; low and high speed	75 °F	Hot	None.
SC03	Low speed	95 °F	Hot	A/C on.
Cold FTP	Low speed	20 °F	Cold and hot	None.

We have highlighted in bold the distinctive features of the five current vehicle tests. The FTP, HFET and US06 are all performed at an ambient temperature of 75 °F. Each test consists of a distinctive driving pattern. In addition, the FTP test consists of three distinct measurements, called bags. Bags 1 and 3 consist of the exact same driving pattern, but Bag 2 consists of a different pattern. Given that separate emission measurements are already made for each bag, we considered each bag of the FTP to be its own driving cycle. In addition, as discussed in Section V, the US06 cycle includes both low and high speed driving. We are proposing that separate emission measurements be made for these two types of driving, again providing separate estimates of fuel use for these two driving patterns. Therefore, we have available fuel economy estimates for five distinct driving patterns:

(1) Bags 1 and 3 of the FTP,
(2) Bag 2 of the FTP,
(3) HFET,
(4) the city portion of US06 and
(5) the highway portion of US06.

We propose to combine the results of these five tests to represent typical city and highway driving patterns. (The separation of the US06 test into two distinct sections is discussed further below.)

The FTP and the cold FTP are the only tests which include a cold start (i.e., an engine start after an overnight soak); the fuel needed to warm up the engine at 75 °F is taken from the FTP results. The SC03 test is the only test to be performed with the air conditioning system operational. Therefore, its results are used to augment the fuel economy from the five driving pattern tests for the fuel needed to operate air conditioning. The cold FTP is the only test performed at a temperature below 75 °F. Therefore, its results are used to represent the additional fuel needed to warm up an engine after a cold start, as well as any fuel needed to operate a warmed up engine, at colder temperatures.

As implied above, we estimate the fuel needed to start and warm up the engine separately from fuel used to operate the engine after start-up, or running fuel use. This is consistent with the approach taken in EPA emission models, such as MOBILE6.2 and MOVES. In terms of a mathematical formulae,

Total fuel use = start fuel use + running fuel use

and,

$$\text{Overall fuel economy} = \frac{1}{\text{start fuel use} + \text{running fuel use}}$$

We describe the estimation of start fuel use in Section II.B.1 and the estimation of running fuel use in Section II.B.2. In Section II.B.3, we discuss other aspects of driving which are not addressed by the dynamometer tests and which are addressed by applying an overall, or off-test adjustment factor to the city and highway fuel economy formulae. The reader is referred to Chapter II of the Draft Technical Support Document for a more detailed discussion of each of the inputs to the fuel economy formulae.

1. Start Fuel Use

For a specific vehicle, the fuel needed to warm up the engine depends primarily on two factors:

(1) The ambient temperature at which the vehicle has been sitting, and

(2) the length of time which the vehicle has been sitting since it was last used (commonly referred to as soak time).

Emissions during engine start up have been studied for some time. Most recently, estimates of start fuel use as a function of ambient temperature were made for use in EPA's new emission inventory model, MOVES (*MO*tor *V*ehicle *E*mission inventory *S*ystem).[45] The relationship between start fuel use relative to that at 75 °F at other ambient temperatures is as follows:[46]

Start Fuel Use Relative to that at 75 °F =

$$1 + 0.01971 \times (\text{Ambient Temperature} - 75) + 0.000219 \times (\text{Ambient Temperature} - 75)^2$$

As will be seen below, we do not need an absolute estimate of start fuel use, simply an estimate of start fuel use relative to some specified ambient condition, such as 75 °F, which is the nominal temperature of the FTP test.

MOVES does not yet include the effect of soak time on start fuel use. Therefore, we obtained a relationship between start fuel use and ambient temperature which was developed by the California Air Resources Board for use in their emission inventory model, EMFAC2000.[47] EPA utilizes the results of this study in our current emission model, MOBILE6.2, to estimate the effect of soak time on regulated emissions during start-up. The equation for fuel use versus soak time (in minutes) relative to the fuel use after a 12 hour soak is as follows:

For soaks of 90 minutes or less:

$$\text{Start Fuel Use} = 0.00433672 \times \text{Soak Time} - 0.000002393 \times (\text{Soak Time})^2$$

For soaks greater than 90 minutes:

$$\text{Start Fuel Use} = 0.25889542 + 0.0014848 \times \text{Soak Time} - 0.0000006364 \times (\text{Soak Time})^2$$

As is assumed in EMFAC2000 and MOBILE6.2, we assumed that these relationships are independent of ambient temperature.

In order obtain the combined effect of ambient temperature and soak time, we multiplied the two above equations together, as follows:

For soaks of 90 minutes or less:

$$\text{Start Fuel Use} = \lfloor 0.00433672 \times \text{Soak Time} - 0.000002393 \times (\text{Soak Time})^2 \rfloor \times [1 + 0.01971 \times (\text{Ambient Temperature} - 75) + 0.000219 \times (\text{Ambient Temperature} - 75)^2]$$

For soaks greater than 90 minutes:

$$\text{Start Fuel Use} = \lfloor 0.25889542 + 0.0014848 \times \text{Soak Time} - 0.0000006364 \times (\text{Soak Time})^2 \rfloor \times [1 + 0.01971 \times \text{Ambient Temperature} - 75) + 0.000219 \times (\text{Ambient Temperature} - 75)^2]$$

The hot and cold starts contained in the standard and cold temperature FTP tests occur after 10 minute and 12 hour soaks, respectively. The above equations relating the effect of soak time on start fuel use indicate that the start fuel use after a 10 minute soak is only 4 percent of that after a 12 hour soak. The above equation relating the effect of temperature on start fuel use indicates that start fuel use at 20 °F is 2.75 times that at 75 °F. Combining these effects, the start fuel use after a 10 minute soak at 20 °F is about 11 percent that of a 12 hour soak at 75 °F. Thus, the start fuel use after the hot starts of both standard and cold temperature FTP tests are relatively small compared to that of a cold start at 75 °F.

In contrast to the cold start after a 12 hour soak, the hot starts for Bag 3 of the standard and cold temperature FTP tests and the US06, SC03 and HFET tests occur after only a 10 minute soak. The above equation indicates that the fuel use for a hot start is only 4 percent of that for a cold start.

In order to estimate start fuel use throughout the U.S. under average ambient conditions, we need estimates of the soak times for typical vehicle operation, as well as the ambient temperature at start up. The amount of time a vehicle has sat prior to start up varies dramatically depending on the time of day at which it is started. For example, for vehicles started up at 6 a.m., nearly all have sat idle overnight. However, for vehicles started at noon, most have been driven in the past 4–5 hours. Ambient temperature varies significantly during the day. Thus, it is more accurate to evaluate start fuel use by hour of the day rather than simply at the daily average temperature. Ambient temperatures also vary dramatically across the U.S., as does the distribution of vehicle miles traveled (VMT). Therefore, we combined estimates of vehicle starts and prior soak times by hour of the day with estimates of ambient temperature and VMT by county in order to reflect the effects of both soak time and ambient temperature on start fuel use.

We obtained estimates of each of these input parameters from EPA's MOBLE6.2 and MOVES emission models. The draft MOVES2004 model includes estimates of ambient temperature by hour of the day for each month of the year for each county in the U.S. These estimates were obtained from the National Weather Service and represent 30-year averages. The draft MOVES2004 model includes estimates of vehicle miles traveled (VMT) by vehicle type for every county in the U.S. during 2002. We used these estimates to determine the percentage of VMT by cars and light trucks in each county. MOBILE6.2 includes estimates of the frequency distributions of vehicle soak times by time of day, as well as the frequency distribution of vehicle starts by hour of the day. Draft MOVES2004 also includes estimates of VMT by month of the year for the nation as a whole.

We first estimated the effect of soak time on start fuel use by hour of the day. These estimates ranged from a low of 0.25 of an overnight soak at 2 p.m. to a high of 0.68 of an overnight soak at 6 a.m. This makes sense, as most vehicles being started at 6 a.m. in the morning have sat overnight, while most vehicles being started in the middle of the afternoon have been used in the past few hours. These estimates are independent of temperature, because the temperature during any particular hour is assumed to be constant.

In order to estimate start fuel use across the nation throughout the year, we calculated the start fuel use for each hour of the day by month for each county in the U.S. and then weighted each estimate by the relative number of starts occurring in each hour of the day and by the relative amount VMT in each month and county. Finally we summed the weighted start fuel use estimates across all hours of the days, months and counties and found the average.

The average start fuel use resulting from this process was 0.4665 of an overnight soak at 75 °F. We can simulate this average start fuel use with a variety of combinations of hot and cold starts at 20 °F and 75 °F. For example, the level of start fuel use is equal to a 0.4665 weighting of the cold start fuel use in Bag 1 of the FTP at 75 °F and no weighting of the start fuel use at 20 °F.

[45] A draft of MOVES2004 was released for public comment on Dec. 31, 2004.

[46] Koupal, J., and L. Landman, E. Nam, J. Warila, C. Scarbro, E. Glover, R. Giannelli. MOVES2004 Energy and Emissions Report—Draft Report. U.S. Environmental Protection Agency, No. EPA420–P–05–003, March 2005, pp 57–63. Web site: *http://www.epa.gov/otaq/models/ngm/420p05003.pdf.*

[47] California Air Resources Board. Public Meeting to Consider Approval of Revisions to the State's On-Road Motor Vehicle Emissions Inventory—Technical Support Document. California Environmental Protection Agency, March 2000. See Section 6.7 (Start Correction Factors). Web site: *http://www.arb.ca.gov/msei/on-road/doctable_test.htm.*

Or, this level of start fuel use is also equal to a lower weighting of the cold start fuel use in Bag 1 of the FTP at 20 °F and no weighting of the start fuel use at 75 °F. In order to select a single combination which best incorporated the measured start fuel use at both 20 °F and 75 °F, we evaluated start fuel use only as a function of soak time and time of day, assuming temperature was constant throughout the day. We found that the typical start fuel use was 0.330 times that of a cold start (12 hour soak). We then determined that a weighting of 0.24 for a cold start at 20 °F and 0.76 for a cold start at 75 °F, combined with an overall weighting of 0.330 for cold starts produced the same level of start fuel use as 0.4665 times a cold start at 75 °F, or the average level of start emissions estimated to occur in-use.

In terms of the use of the FTP test results, Bag 3 contains the start fuel use after a 10-minute soak, and Bag 1 contains the start fuel use after a 12 hour soak. Other aspects of Bag 1 and Bag 3 are the same (i.e., the vehicle is driven exactly the same, only the soak time prior to start up differs). As indicated above, however, the start fuel use after a 10 minute soak can be assumed to be negligible compared to that after the 12 hour soak.[48] This means that the difference between fuel use in Bag 1 and Bag 3 is the start fuel use following a 12 hour soak. Thus, the average start fuel use in the U.S. is 0.24 times 0.330 times the difference between fuel use in Bag 1 and Bag 3 of the cold temperature FTP plus 0.76 times 0.330 times the difference between fuel use in Bag 1 and Bag 3 of the standard FTP at 75 °F.

Hybrids are tested over what is commonly referred to as a 4-bag FTP test, with Bag 4 consisting of a Bag 2 repeated after Bag 3. In this case, the cold start fuel use would be determined exactly as described above. However, these four bags can also be combined into two bags, with Bag 1 consisting of a typical Bag 1 and Bag 2 and Bag 2 consisting of a typical Bag 3 and Bag 4. In this case, cold start fuel use would be determined from the difference in fuel use between Bags 1 and 2 of the 2-bag FTP test.

This estimate of start fuel use is in terms of total fuel use per start. In order to combine this with running fuel use in terms of gallons per mile, start fuel use must be divided by the average trip length. We based our estimate of the average trip length in the U.S. on the National Household Travel Survey (NHTS). The NHTS was performed in 2001 and statistically surveyed approximately 26,000 households in the U.S. This survey represents the sixth in a series of surveys dating back to 1969. (The name of the survey has changed a few times and the precise survey methods have varied to some degree.) NHTS found that the average trip taken using a personal vehicle in the U.S. was 9.8 miles long. This estimate excludes very long trips, such as those taken on vacations, as well as commercial trips, such as those by taxi cabs. Based on the survey questionnaire, we believe that the survey also excludes brief stops (e.g., those at gas stations or convenience stores), as well as extremely short trips (e.g., moving a vehicle out of a driveway to allow another vehicle to exit, moving from one shopping center to another just across the street). Using trip information from instrumented vehicles in Baltimore and Spokane (described in more detail below), about 27 percent of all trips fall into one of these two categories. Thus, we believe that a more precise estimate of trip length, and one that is more consistent with our estimate of the fraction of cold starts described above, is 7.7 miles (9.8 miles divided by 1.27).

This trip length of 7.7 miles includes all driving, both city and highway oriented. NHTS does not attempt to split driving into city and highway categories. Therefore, additional information was needed to perform this split. As will be described in more detail below, we estimate that 43 percent of all U.S. driving falls under our definition of city driving, while 57 percent falls into the highway driving category. The highway fuel economy label assumes no cold starts (i.e., it is based solely on the HFET, which is a hot start test), except insofar that the effect of a cold start is included in the 22 percent adjustment factor. Since even long trips have a beginning and often begin with a cold start, we assumed that the average highway trip had a length of 60 miles. This is somewhat arbitrary. However, once trip length is over 20 miles, start fuel use has very little impact on fuel economy. Still, the inclusion of some start fuel use in the highway fuel economy estimate makes this estimate more realistic. Assuming an average trip length of 60 miles for highway driving, the average length of a city trip must be 3.5 miles for the overall average to be 7.7 miles. Using these two estimates of average trip length allows us to convert fuel use per engine start into fuel use per mile.

The total volume of fuel used in either Bag 1 or Bag 3 of the FTP can be determined by dividing the number of miles of driving during these portions of the test (3.59 miles for either bag) by the fuel economy measured during that bag. Thus, the equation for fuel use per start at either 20 °F or 75 °F is as follows:

For vehicles tested over either a 3-Bag FTP or 4-Bag FTP:

$$\text{Start Fuel}_x\,(\text{gallons of fuel}) = \frac{3.59}{\text{Bag 1 FE}_x} - \frac{3.59}{\text{Bag 3 FE}_x}$$

For vehicles tested over either a 2-Bag FTP:

$$\text{Start Fuel}_x\,(\text{gallons of fuel}) = \frac{7.5}{\text{Bag 1 FE}_x} - \frac{7.5}{\text{Bag 2 FE}_x},$$

where x is either 20 °F or 75 °F.

The equation for start fuel use in terms of gallons per mile is:

For city driving:

[48] The Draft MOVES2004 model also assumes that start fuel use after a hot start is negligible.

$$\text{StartFC}(\text{gallonspermile}) = 0.330 \times \left[\frac{(0.76 \times \text{StartFuel}_{75} + 0.24 \times \text{StartFuel}_{20})}{3.5} \right]$$

For highway driving:

$$\text{StartFC}(\text{gallonspermile}) = 0.330 \times \left[\frac{(0.76 \times \text{StartFuel}_{75} + 0.24 \times \text{StartFuel}_{20})}{60.0} \right]$$

2. Running Fuel Use

Running fuel use depends primarily on how the vehicle is driven and the use of fuel to power accessories. Of the latter, air conditioning is the most significant and the primary accessory addressed in the emission and fuel economy dynamometer tests. Once the vehicle is warmed up, ambient temperature has only a modest effect on fuel use.

The five dynamometer tests include four distinct driving cycles, or patterns of driving. In addition, the FTP and US06 cycles (the latter as proposed to be modified) each include two distinct driving patterns. Two basic characteristics of these driving patterns are depicted in Table II–2: average speed and a basic measure of the average power required by the engine.

TABLE II–2.—DRIVING CHARACTERISTICS OF THE CURRENT DYNAMOMETER TESTS

Cycle	Average speed	Average power [A]
FTP (Bags 2 and 3)	19.6	40.9
FTP: Bag 3	25.6	53.6
FTP: Bag 2	16.1	33.8
HFET	48.2	34.9
US06	48.0	104.3
US06: City Bag	21.5	152.9
US06: Highway Bag	61.0	78.2
SC03 (run with air conditioning on)	21.4	49.2
Cold Temperature FTP (same driving cycle as FTP)	19.6	40.9

[A] Power defined as velocity times the change in velocity per second during cruise or accelerations. Power is set equal to zero during decelerations and not considered in the determination of average power.

The FTP and the cold temperature FTP both involve the same driving cycle, just at different ambient temperatures. Thus, their average speeds and power are identical, both for the total cycle and for each bag of emissions measured. The FTP and SC03 involve distinct, but similar driving cycles. Both are low speed cycles having similar average speeds and power levels. As the SC03 test is only run with the air conditioning on and all the other tests are run with air conditioning off, it is not possible to isolate the effect of the driving cycle differences between the FTP and SC03 tests directly. Thus, this leaves five distinct driving patterns which can be used to represent typical U.S. driving: Bag 2 of the FTP, Bag 3 of the FTP, HFET, City Bag of US06 and Highway Bag of US06.

As shown in Table II–2, both Bags 2 and 3 of the FTP are low speed cycles, but their average power requirements differ by a factor of 1.7. As will be seen below, it is useful to consider each bag separately in simulating typical city and highway driving.

The current US06 test currently consists of 600 seconds of driving and the emissions are collected in one bag (i.e., one single collection of pollutants emitted during the test). Thus, the fuel economy result is over the entire cycle. The US06 driving cycle consists of 5 hills, or 5 driving segments which begin and end with the vehicle at idle. All but the second and third hills consist of relatively low speed driving, while the second hill reaches 71 mph and the third hill reaches 80 mph. Therefore, in terms of predicting fuel economy, it is useful to separate the low speed driving from the high speed driving. For practical reasons, when separating the city into ''city'' and ''highway'' portions, we grouped the second hill with the four low speed hills in the city bag and the highway bag consists of the relatively long third hill. Overall, seconds 0–131 and 496–600 of the cycle would comprise the city bag and seconds 132–495 would comprise the highway bag. The description of the hills within US06 and their designation is summarized in Table II–3 below.

TABLE II–3.—SPLIT OF US06 CYCLE INTO CITY AND HIGHWAY PORTIONS

Hill	Portion of driving cycle (cumulative seconds)	Maximum speed (mph)	Designation
1	0–43	44.2	City.
2	44–134	70.7	City.
3	134–499	80.3	Highway.
4	500–563	29.8	City.
5	564–600	51.6	City.

As described in the Introduction, driving at an average speed below 45 mph is defined as city driving, while that above 45 mph is defined as highway driving. We obtained a description of average U.S. driving from the Draft MOVES2004 motor vehicle emissions model. This description included a distribution of vehicle speeds and levels of vehicle specific power. Using the definition of city and highway driving, we separated the MOVES description of driving into city and highway categories. We then performed a linear regression to estimate what two combinations of the five driving cycles or bags best fit average U.S. city and highway driving patterns, respectively. The results are two sets of cycle combinations in terms of time spent driving. These are shown in Table II–3. We then used the average speeds of the various cycles and bags to convert these to combinations to a mileage basis. The combinations of cycles found to best represent onroad driving in terms of both time spent driving and mileage driven are shown in Table II–4.

TABLE II–4.—WEIGHTING FACTORS FOR THE FIVE DYNAMOMETER CYCLES (PERCENT)

Cycle	City driving		Highway driving	
	Time (percent)	Mileage (percent)	Time (percent)	Mileage (percent)
Bag 3 FTP	32	41	0	0
Bag 2 FTP	60	48	0	0
HFET	0	0	25	21
US06 City	8	11	0	0
US06 Hwy	0	0	75	79

From the results shown in Table II–4, over 90 percent of the time spent in city driving, and nearly 90 percent of the mileage, is best explained by Bags 2 and 3 of the FTP cycle. Roughly 80 percent of both driving time and mileage of highway driving is best explained by the highway portion of the US06 cycle. These findings confirm that the FTP (the current basis for the city fuel economy label) is still generally representative of most low speed driving in the U.S. However, the relatively low speed and mild accelerations of the HFET (the current basis for the highway fuel economy label) is not representative of higher speed driving in the U.S.

These results also confirm the separation of the two types of driving contained in the US06 cycle. Only the city portion of US06 appears in the description of city driving and only the highway portion of US06 appears in the description of highway driving. At the same time, the relative weights for Bags 2 and 3 in the description of city driving are similar to that implicit in the FTP, which is 52 percent and 48 percent, respectively.

As mentioned above, the fuel use over the three dynamometer cycles, when combined using these weighting factors, best matches the fuel use which would occur during typical city and highway driving. The weighting is performed in terms of fuel use, or fuel consumption per mile. For example, fuel use during city driving is 0.48 times the multiplicative inverse of the fuel economy measured over Bag 2 of the FTP cycle plus 0.41 times the multiplicative inverse of the fuel economy measured over Bag 3 of the FTP cycle plus 0.11 times the multiplicative inverse of the fuel economy measured over the city bag of the US06 cycle.

$$\text{Funning fuel use (city)} = \frac{0.48}{\text{FE Bag 2}} + \frac{0.41}{\text{FE Bag 3}} + \frac{0.11}{\text{FEUS06}_{\text{C}}}$$

$$\text{Funning fuel use (highway)} = \frac{0.21}{\text{FE HFET}} + \frac{0.79}{\text{FEUS06}_{\text{H}}}$$

These estimates of running fuel use accounts for a wider variety of city and highway driving patterns than the FTP and HFET cycles alone. However, these combinations of fuel use still do not include any fuel use related to air conditioning or cold temperature. Fuel use related to air conditioning is estimated using the SC03 test. As shown in Table II–2, the driving pattern contained in the SC03 test is similar to that of the FTP, but not identical.

Using the MOVES2004 methodology for modeling fuel use, we estimated the combination of Bags 2 and 3 of the FTP which would match the fuel use over the SC03 cycle with the air conditioning turned off. This combination is 0.39 times the fuel consumption over Bag 2 and 0.61 times the fuel consumption over Bag 3. Thus, we propose to estimate the incremental fuel use due to the operation of the air conditioner as the difference in fuel use measured over the SC03 versus this combination of fuel use over Bags 2 and 3 of the standard FTP.

This difference in fuel use between the two tests provides a direct estimate of the impact of air conditioning use for the conditions present during the SC03 test. The SC03 test is performed at 95 °F and 40 percent relative humidity. The test only lasts 10 minutes and the vehicle is pre-heated with radiant lamps for 10 minutes prior to the test. Thus, the air conditioning compressor is generally engaged throughout the entire test. As shown in Table II.–2., the speed of the vehicle during the SC03 test is also relatively low, at an average speed of 21.5 mph. Of course, onroad, vehicles operate at different speeds and ambient temperatures and the compressor may not be engaged 100 percent of the time, particularly during longer trips. All three of these factors can affect the impact of air conditioning on fuel economy. We therefore adjust the estimate of the impact of air conditioning on fuel use from the SC03

test in three ways to account for these three factors.

The largest factor is portion of driving time during which the compressor is actually engaged to cool inlet air to the vehicle. The Draft MOVES2004 model contains an algorithm which estimates the percentage of time which the compressor is engaged as a function of ambient temperature and humidity. This algorithm was developed from the direct measurement of air conditioning operation of 20 vehicles in Phoenix, Arizona during the summer and fall of 1992.[49] The algorithm considers both the frequency that the system is turned on by the driver and the frequency that the compressor is engaged once the system is turned on. We combined this algorithm with long term average meteorological conditions for each county in the U.S. to estimate the percentage of driving time during which the compressor was engaged under those conditions. We considered both diurnal and seasonal temperature variations, as well as variations in the amount of driving performed throughout the day and across seasons. We estimate that drivers have the air conditioning turned on 23.9 percent of the time on average across the U.S., and the compressor is engaged 15.2 percent of the time.

We then adjusted this latter percentage to account for reduced compressor loads at temperatures less than 95 °F and higher loads above 95 °F.[50] Again this was done for each county in the U.S., accounting for diurnal and seasonal temperature and driving differences. From this, we estimate that the average load of the air conditioning compressor in-use is about 87 percent of that at 95 °F (i.e., during the SC03 test). Thus, the average load of the compressor in-use is the same as 13.3 percent (15.2 percent × 0.87) of the load experienced during the SC03 test.

Finally, the impact of air conditioning on fuel economy varies with vehicle driving pattern. Most air conditioning compressors are belt-driven by the engine. The efficiency of both the engine and compressor varies with engine speed and load. This variation is difficult to model, as the speed and load of engines in various vehicles varies dramatically based on the vehicle's drivetrain design, even over the same driving cycle. Therefore, we assume that the efficiency of the engine and air conditioning compressor implied in the SC03 test applies to other types of driving, as well. However, a more basic effect related to driving pattern is that the faster a vehicle is moving, the shorter the amount of time that the vehicle needs to be cooled while it travels a specific distance. Other factors being equal, this reduces the amount of energy needed to cool the vehicle per mile of travel. Therefore, for a specific set of ambient conditions, we assume that the impact of air conditioning on fuel use is constant with driving time (i.e., fuel use in terms of gallons per hour is constant). This means that the excess fuel use due to operating the air conditioner varies inversely proportional to vehicle speed. In other words, at low vehicle speeds, like that of the SC03 test, excess fuel use is relatively high on a per mile basis. At high vehicle speeds, like that of highway driving, the excess fuel use due to operating the air conditioner is relatively low on a per mile basis. We confirmed this assumption by testing five vehicles over a variety of test cycles at EPA's Ann Arbor laboratory with both the air conditioning turned on and off. The results of this test program and an analysis of the data are described in the Draft Technical Support Document.

The air conditioning compressor is also often engaged when the defroster is turned on to keep the windshield from fogging up. The air conditioning dehumidifies the air and excesses the effectiveness of the defroster. Today's proposal does not include a specific weighting for demisting activity. We lack a direct estimate of the frequency that the defroster is turned on or the compressor is engaged during demisting. Due to the fact that the defroster tends to be operated at lower ambient temperatures than the air conditioner, the load on the engine is generally much lower than that during summertime air conditioning. Thus, the impact of demisting on fuel economy is likely much smaller than that of summertime air conditioning.

Given the above, the impact of air conditioning on running fuel use is estimated as 13.3 percent of the difference between fuel use per mile over the SC03 and a combination of Bags 2 and Bag 3 of the FTP times 21.5 mph and divided by the average speed of either city or highway driving. Based on the descriptions of city and highway driving from Draft MOVES2004, the average speeds are 19.9 mph and 57.1 mph, respectively. Thus, the excess fuel use due to air conditioning operation is:

$$\text{For city driving} = 0.133 \times \left(\frac{21.5}{19.9}\right) \times \left[\frac{1}{\left(\begin{array}{c}\text{Fuel economy}\\ \text{over the SC03 test}\end{array}\right)} - \frac{1}{\left(\frac{0.39}{\text{Fuel economy over Bag 2}} + \frac{0.61}{\text{Fuel economy over Bag 3}}\right)}\right]$$

[49] Koupal, J. W. Air Conditioning Activity Effects in MOBILE6 (M6.ACE.001). U.S. Environmental Protection Agency, No. EPA420–R–01–054, November 2001. *Website: http://www.epa.gov/otaq/models/mobile6/r01054.pdf.*

[50] Nam, Edward K., ''Understanding and Modeling NO_X Emissions From Air Conditioned Automobiles,'' 2000, SAE #2000–01–0858.

$$\text{For highway driving} = 0.133 \times \left(\frac{21.5}{57.1}\right) \times \left[\frac{1}{\left(\begin{array}{c}\text{Fuel economy}\\ \text{over the SC03 test}\end{array}\right)} - \frac{1}{\left(\frac{0.39}{\text{Fuel economy over Bag 2}} + \frac{0.61}{\text{Fuel economy over Bag 3}}\right)}\right]$$

Finally, we have to add the impact of colder ambient temperatures on running fuel use. We can obtain a direct estimate of the impact of colder ambient temperatures on running fuel use by comparing the fuel use over the standard and cold temperature FTP tests. By focusing on Bag 2 of each FTP test, we exclude the impact of cold temperature on start up fuel use, which was already addressed in Section II.B.1 above. For hybrid vehicles, which are tested over the bag 2 driving cycle twice (the first time as Bag 2 and the second time as Bag 4), we propose to harmonically average the fuel economies from Bags 2 and 4.

We considered including Bag 3 in the determination of the effect of cold temperature on running fuel use. Bag 3 includes some higher speed driving, so its inclusion broadens the overall driving pattern included in the estimate. This would particularly improve the representativeness of the estimate for highway driving. However, Bag 3 begins with a hot start, unlike Bag 2 which simply follows directly after Bag 1 with no engine shut-off and restart in between. At 75 °F, a hot start requires a negligible volume of additional fuel use. However, at 20 °F, even a hot start can require some excess fuel use. Thus, including the difference between Bag 3 fuel use at 20 and 75 °F in the estimate of the impact of cold temperature on running fuel use could also include some excess fuel use related to engine warm up, as well. Available data indicate that the relative impact of operation at 20 °F versus 75 °F is nearly identical for the two bags (10 percent for Bag 2 and 11 percent for Bag 3). However, the fuel economy over Bag 3 is lower than over Bag 2, so the absolute difference in fuel use between 20 °F and 75 °F is actually lower in Bag 3 than Bag 2. We request comment on whether the impact of cold temperature on running fuel use should only involve Bag 2 or should involve both Bags 2 and 3.

Neither MOBILE6.2 nor MOVES2004 include correlations of the effect of ambient temperature on running fuel use. However, as just described, the impact of colder ambient temperatures on running fuel use is small (i.e., 10 percent over a drop in temperature of 55 °F). We believe that the additional fuel use is primarily due to the loss of heat to the cooler ambient air, higher friction in the slightly cooler moving parts, as well as slight changes in the properties of the cooler intake air and air fuel mixture during combustion. All of these changes are expected to be gradual and fairly linear. Therefore, we assume that the excess fuel use increases linearly as temperatures decrease below 75 °F. Above 75 °F, we assumed that there was no further reduction in running fuel use. (This latter assumption was confirmed as part of the five vehicle test program described above.) We also assume that the excess fuel use is independent of driving pattern. In other words, the excess fuel use is the same for city and highway driving on an absolute basis. We request comment on assuming that the excess running fuel use due to colder temperatures is independent of driving pattern on a relative basis (i.e., in percentage terms).

Using the same meteorological and VMT inputs described above related to start fuel use, we estimate the average temperature in the U.S. at which driving occurs is 58.7 °F. This temperature is 70 percent of the way from 75 °F to 20 °F. Thus, any excess fuel use associated with operation at 20 °F should be weighted by 100 percent minus 70 percent, or 30 percent.

Given the fact that over 80 percent of city driving is represented by Bags 2 and 3 of the FTP, we decided to use the fuel economy measured during Bags 2 and 3 of the cold FTP directly to represent the fuel economy of city driving at 20 °F. We repeated the regression of the VSP distribution of city driving from Draft MOVES2004 against the VSP distributions of just Bags 2 and 3. The best fit produced a 50/50 weighting of the two bags. Thus, we propose to represent the fuel economy of city driving at 20 °F by a 50/50 harmonic average of the fuel economy over Bags 2 and 3 of the cold FTP. Mathematically, then, for city driving:

$$\text{Excess fuel use due to colder temperatures} = 0.3 \times \left[\left(\frac{0.5}{\text{Bag } 2_{20}\text{ FE}} + \frac{0.5}{\text{Bag } 3_{20}\text{ FE}}\right) - \left(\frac{04.1}{\text{Bag } 3_{75}\text{ FE}} + \frac{0.48}{\text{Bag } 2_{75}\text{ FE}} + \frac{0.11}{\text{US06 City FE}}\right)\right]$$

Highway driving occurs at higher speeds than those typical of the cold FTP. We conducted a detailed review of past test programs which evaluated the impact of colder temperatures on fuel economy at highway driving speeds. This review is described in the Draft Technical Support Document. There, we concluded that the effect of cold temperature on fuel economy at city driving speeds could overestimate the effect at higher speeds. Thus, we decided not to use the fuel economy measured over the cold FTP directly to represent the impact of cold temperature on highway fuel economy. Instead, we believe that it is more prudent at this time to simply assume that running fuel use at 20 °F at highway speeds is 4 percent greater than that at 75 °F. Thus, mathematically, for highway driving:

$$\text{Excess fuel use due to colder temperatures} = 0.3 \times 0.04 \times \left[\frac{0.21}{\text{HFET FE}} + \frac{0.79}{\text{US06 Highway FE}}\right]$$

Combining the estimates of running fuel use at 75 °F without the air conditioning system running with the estimate of excess fuel use of running the air conditioning system and the estimate of excess fuel use due to colder ambient temperatures produces the following formulae for running fuel use: For city driving:

$$\text{Running Fuel Use} = 0.70 \times \left[\frac{0.48}{\text{Bag } 2_{75} \text{ FE}} + \frac{0.41}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.11}{\text{US06 City FE}}\right] + 0.30 \times \left[\frac{0.5}{\text{Bag } 2_{20} \text{ FE}} + \frac{0.5}{\text{Bag } 2_{20} \text{ FE}}\right] + 0.133 \times \frac{21.5}{19.9} \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 2_{75} \text{ FE}}\right)\right]$$

For highway driving:

$$\text{Running Fuel Use} = (1 + 0.30 \times 0.04) \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}}\right] + 0.133 \times \frac{21.5}{57.1} \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 2_{75} \text{ FE}}\right)\right]$$

3. Adjustment Factor for Non-Dynamometer Effects

Fuel economy estimated using the five current dynamometer tests can account for many factors, including vehicle design, driving pattern, trip length, cold temperature and air conditioning. However, there are still a large number of factors which affect vehicle fuel economy that cannot be addressed by dynamometers tests. These include roadway roughness, road grade (hills), fuel quality, large vehicle loads (e.g., trailers, cargo, multiple passengers), wind, precipitation, to name just a few. Even when a factor is addressed by a dynamometer test, such as driving pattern or air conditioning, the effect can only be approximated, as all realistic driving patterns cannot possibly be included in a test having a reasonable length of time. Nor can all the possible ambient conditions affecting air conditioner operation be tested. Thus, any estimate of in-use fuel economy derived from the five dynamometer tests is necessarily approximate, both with respect to factors addressed directly by the tests and those which are not.

The impacts of a number of these factors on onroad fuel economy relative to that measured on a dynamometer is possible to estimate, while others are difficult to estimate. One factor which can be estimated is fuel quality. EPA's certification test fuel contains no oxygenates, while commercial gasoline contains significant volumes of ethanol and methyl tertiary butyl ether (MTBE). Both ethanol and MTBE contain less energy per gallon, so vehicles operating on fuel containing these oxygenates tend to achieve lower fuel economy, generally in proportion to the reduction in the energy content of the finished gasoline. For example, the driver of a vehicle operating on gasoline containing ten percent ethanol by volume would experience a 3.5 percent decrease in fuel economy compared to gasoline not containing any ethanol or other oxygenate. We expect the nation's gasoline supply to contain roughly 5.4 billion gallons of ethanol by 2008. This is equivalent to 37 percent of the nation's gasoline supply containing 10 percent ethanol by volume. Thus, by 2008, we expect commercial gasoline on average to contain about 1.2 percent less energy per gallon than EPA test fuel. Thus, this difference in energy content means that onroad fuel economy will be about 1.2 percent less than that estimated using the 5-cycle formulae described in the previous section. This effect could increase beyond 2008 as more ethanol is used in the nation's gasoline supply.

Another factor which can be estimated is tire pressure. In February 2001, NHTSA conducted a survey of the tire pressure of in-use vehicles. Tire pressures were measured on over 11,500 vehicles at 24 locations throughout the U.S. The results of the study and our analysis of the data are described in the Draft Technical Support Document. We found that the tires of the average car were under-inflated by 1.1 pounds per square inch (psi), while those on light trucks were under-inflated by 1.9 psi. Using estimates of the effect of tire pressure on fuel economy presented by NHTSA, we estimate that the fleet-wide effect of under-inflation is 0.5 percent.

Another factor which can be estimated, though more approximately, is wind. Wind affects vehicular fuel economy in two ways. First, aerodynamic drag is proportional to the square of vehicle speed (i.e., the higher the vehicle speed, the faster aerodynamic drag increases for a given increase in speed). Thus, increasing wind speed by 1 mph increases aerodynamic drag, and thus, reduces fuel economy, more than the effect of decreasing wind speed by 1 mph. Second, both the effective area of a vehicle and its drag coefficient increases as the true wind direction moves to either side from head-on. Basically, vehicles are designed to move forward through the air, not sideways. Thus, any side wind increases drag and decreases fuel economy. Based on a distribution of wind speeds (yielding an average wind speed in the U.S. of 9.4 mph), we estimate that these two effects reduce onroad fuel economy on average by 5–6 percent.

Several other factors are still relevant to a 5-cycle fuel economy estimate, namely altitude, road grade, road surface, road curvature, brake drag, wheel alignment, tire switching, and vehicle load. EPA estimated the impact of these factors to be 8 percent at the time of the 1984 label adjustment rule.

We have reduced the impact of road surface from 4 percent to 1–3 percent due to increased urbanization and road paving which has occurred since that time. Thus, we estimate these other factors to reduce onroad fuel economy by 5–7 percent. Combining this estimate with those of fuel quality, tire pressure and wind produces an overall downward effect of 11–15 percent.

As described further in Section II.E below, we also compared the 5-cycle fuel economy values to fleet-wide estimates of fuel economy made by FHWA for 2002 and 2003, after we made several adjustments to improve the comparability of the two estimates. The 5-cycle fuel economy values best match the FHWA-based estimates when we include a factor of 0.88–0.91 in the 5-cycle fuel economy formulae (i.e., a reduction of 9–12 percent due to factors not addressed by the 5-cycle formulae). We propose to average these two ranges (i.e., the 9–12 percent range based on FHWA, and the 11–15 percent range based on the analysis of non-dynamometer effects discussed above) and account for these factors by including a factor of 0.89 in the 5-cycle city and highway formulae (i.e., a reduction of 11 percent in both city and highway fuel economy).

D. Derivation of the MPG-Based Approach

The mpg-based approach to fuel economy label adjustments utilizes the results of applying the 5-cycle formulae to all vehicles for which we were able to gather fuel economy data for all five dynamometer cycles. We requested that all manufacturers submit to us all their available fuel economy data for vehicles which had been tested over at least one of the US06, SC03 or cold FTP tests. We combined this data with our own fuel economy data to develop a database of 423 recent model year vehicles which had been tested over all five cycles. We applied the above 5-cycle formulae to these vehicles. We then developed a relationship between the 5-cycle city and highway fuel economies and the city and highway fuel economies using the current adjustment factors, respectively.

We evaluated two options for developing this relationship. One option plotted 5-cycle fuel economy versus fuel economy using the current adjustment factor. The other option plotted the inverse of 5-cycle fuel economy (i.e., fuel consumption) versus the inverse of fuel economy using the current adjustment factor. As indicated from the description of the 5-cycle fuel economy formulae, most of the modeling of fuel economy is performed in terms of fuel consumption (i.e., gallons of fuel burned per mile versus miles traveled per gallon of fuel burned). While both types of plots produce relationships with a high degree of correlation, the plots in terms of fuel consumption are linear, while those in terms of fuel economy are non-linear. Given that the linear relationship is simpler and the degrees of correlation are essentially the same, we are proposing to base the mpg-based adjustments on the correlations in terms of fuel consumption. However, the label values themselves would remain in terms of fuel economy, as required by EPCA. We request comment on the use of the correlations performed in terms of fuel consumption versus those performed in terms of fuel economy. Both approaches are described in detail in the Draft Technical Support Document.

Figures II–5 and II–6 show the relationship between the inverse of 5-cycle city (or highway) fuel economy (i.e., fuel consumption) versus the inverse of FTP (or HFET) fuel economy. Figure II–5 shows city fuel consumption, while Figure II–6 shows highway fuel consumption.

Figure II-5. – MPG-Based City Fuel Consumption Regression

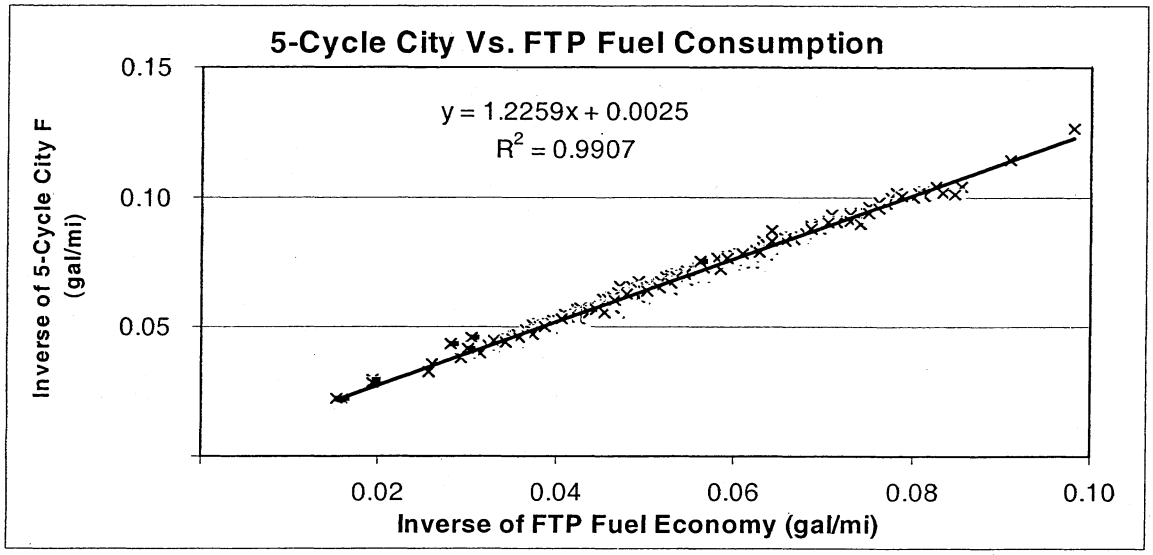
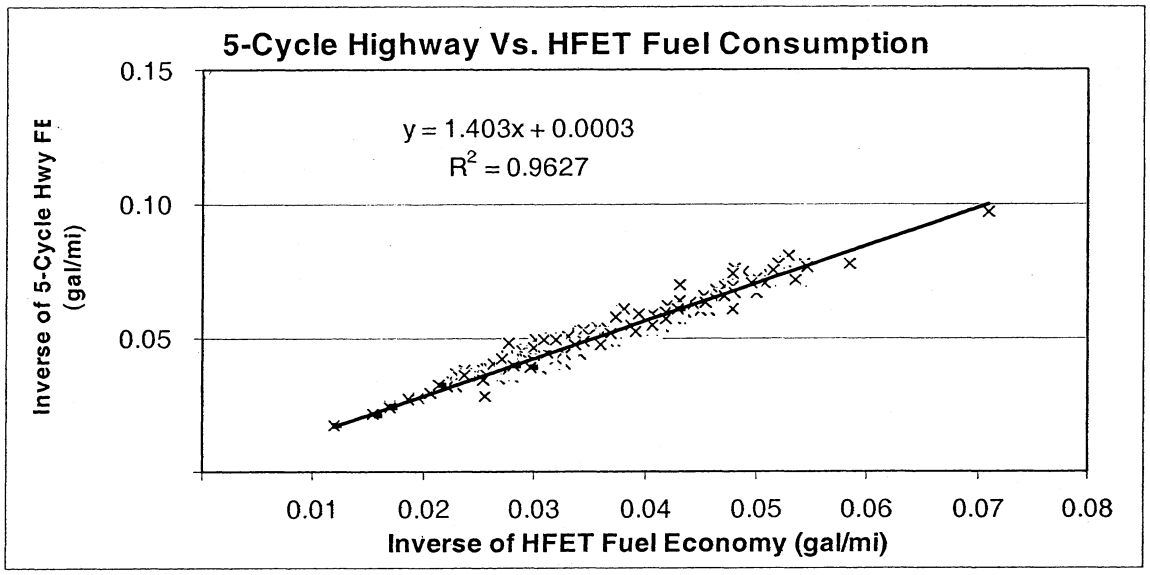


Figure II-6. – MPG-Based Highway Fuel Consumption Regression



The results of regressing 5-cycle fuel consumption versus fuel consumption over the FTP or HFET are shown in the above figures. In terms of fuel economy:

$$\text{MPG Based City FE Label Value} = \frac{1}{\left(0.002549 + \frac{1.2259}{\text{FTP FE}}\right)}$$

$$\text{MPG Based Highway FE Label Value} = \frac{1}{\left(0.000308 + \frac{1.4030}{\text{HFET FE}}\right)}$$

The standard deviation of the difference between the mpg-based equations and the 5-cycle fuel economies are 2 percent for city and 5 percent for highway. These differences are roughly equivalent to 0.5 mpg for city fuel economy and 1–2 mpg for highway fuel economy. Thus, while the mpg-based equations represent much of the difference in fuel economy represented by the 5-cycle formulae, differences between the fuel efficiency of individual vehicles on the order of 0.5–2 mpg are muted by the mpg-based approach.

As mentioned above, the mpg-based equations described above were developed from the 5-cycle fuel economy estimates for 423 2003–2005 model year vehicles. We propose to update the mpg-based curves annually using all of the available 5-cycle fuel economy estimates for the previous three model years. EPA would publish the mpg-based equations for the upcoming model year's labels by March 1 of the previous year (i.e., by March 1, 2007 for the 2008 model year).

E. Effect of the New Formulae on Fuel Economy Label Values

The impact of today's proposal on city and highway fuel economy label values was assessed using the same database of 423 late model year vehicles used to develop the mpg-based adjustments above. Table II–5 presents the results of this comparison for all 423 vehicles, as well as various sub-sets of vehicles.

TABLE II–5.—EFFECT OF 5-CYCLE FORMULAE ON CITY AND HIGHWAY FUEL ECONOMY LABELS

	City			Highway			Combined *		
	Current (mpg)	5-cycle (mpg)	Percent change	Current (mpg)	5-cycle (mpg)	Percent change	Current (mpg)	5-cycle (mpg)	Percent change
Hybrids	42	32	−23	41	37	−9	41	34	−16
Diesels	26	23	−13	35	31	−11	30	27	−9
Conventional vehicles									
12 Highest FE	30	26	−15	36	33	−8	33	30	−10

TABLE II–5.—EFFECT OF 5-CYCLE FORMULAE ON CITY AND HIGHWAY FUEL ECONOMY LABELS—Continued

	City			Highway			Combined *		
	Current (mpg)	5-cycle (mpg)	Percent change	Current (mpg)	5-cycle (mpg)	Percent change	Current (mpg)	5-cycle (mpg)	Percent change
12 Lowest FE	11	10	−11	15	14	−8	12	12	−6
Average	19	16	−13	25	22	−9	21	19	−8

* Combined fuel economy for Current MPG is based on weighting of 55%/45% city/highway, respectively.
Combined fuel economy for 5-Cycle MPG is based on weighting of 43%/57% city/highway, respectively.

As can be seen from Table II–5, use of the 5-cycle formulae would reduce both current city and highway fuel economy label values. For conventional vehicles, city and highway fuel economy values would be reduced an average of 13 percent and 9 percent, respectively. The reduction in city fuel economy label values for higher than average fuel economy vehicles would be slightly higher, while that for lower than average fuel economy vehicles would be slightly lower. The reduction in highway fuel economy label values varies only slightly.

The impact on hybrid vehicles would be greater, averaging a 23 percent reduction for city fuel economy and 9 percent for highway fuel economy. This greater impact occurs primarily because a number of the fuel efficient aspects of hybrid vehicles produce their maximum benefit under conditions akin to the FTP and HFET tests, and are somewhat less beneficial during aggressive driving, colder ambient temperatures and when the air conditioner is turned on. However, these vehicles would still remain among the top fuel economy vehicles.

There is one diesel vehicle in our 5-cycle fuel economy database. The impact of the 5-cycle formulae on this one diesel is very similar to that for the average conventional, gasoline-fueled vehicle.

The impact of the mpg-based formulae would be very similar on average to those shown in Table II–5 above for conventional vehicles. This is not surprising, since the mpg-based formulae are based essentially on the average results of the 5-cycle formulae. However, the mpg-based formulae would increase the city fuel economy of hybrid vehicles slightly, as indicated in Table II–6. This occurs because there are only 9 hybrid vehicles in the database, compared to 413 gasoline-fueled, conventional vehicles. The mpg-based regression of city fuel economy, therefore, represents essentially the impact of the 5-cycle formulae on conventional vehicles, which is less than that for hybrids. The mpg-based regression of highway fuel economy is essentially the same for conventional and hybrid vehicles.

TABLE II–6.—EFFECT OF MPG-BASED FORMULAE ON CONVENTIONAL AND HYBRID FUEL ECONOMY

	City			Highway		
	Current (mpg)	MPG-based (mpg)	Percent change	Current (mpg)	MPG-based (mpg)	Percent change
Conventional	19	16	−13	25	22	−9
Hybrids	42	34	−18	41	37	−10

F. Comparison to Other Onroad Fuel Economy Estimates

In the 1984 label adjustment rule, EPA was able to compare fleetwide estimates of a variety of city and highway fuel economy label options to a number of independent estimates of onroad fleet fuel economy. In the late 1970's and early 1980's, EPA and several auto manufacturers had collected onroad fuel economy estimates from tens of thousands of drivers which could be compared to the EPA city and highway fuel economy labels. The fleetwide combined EPA fuel economy estimate could also be compared to onroad fuel economy based on estimates of total VMT and total fuel consumption from the Federal Highway Administration (FHWA). EPA primarily used the driver-based fuel economy estimates to develop the current 10 percent and 22 percent adjustments to fuel economy over the FTP and HFET, respectively.

Repeating this type of comparison is more complicated today than it was in 1984. First, 5-cycle fuel economy estimates are not available for the current car and light truck fleet. Emission standards based on the US06 and SC03 tests just began to be phased in with the 2001 model year. Also, these tests are only performed on a limited number of vehicle configurations. Second, studies of driver-based fuel economy similar to those available in 1984 have not been performed of late. At the same time, as mentioned in the Introduction above, a number of consumer organizations have begun conducting their own fuel economy tests. Several governmental organizations have been monitoring onroad fuel economy, focused particularly on new hybrid technology. While the findings of these various organizations were compared to the current EPA label fuel economy values in the Introduction, here they will be compared to the 5-cycle and mpg-based fuel economy estimates.

We begin with a comparison of the 5-cycle fuel economy values with the fleetwide fuel economy estimates developed by FHWA. Because we do not have fuel economy data for all vehicles over all 5 dynamometer cycles, and therefore cannot develop a 5-cycle fuel economy estimate for the current onroad fleet directly, this comparison requires a three-step process.

The first step in this process compares fleetwide fuel economy estimates based on EPA's current fuel economy labels to the FHWA estimate of onroad fuel economy. The second step in this process is to compare combined city-highway fuel economy using the 5-cycle formulae to that using the current EPA city and highway label procedures. This comparison is performed for vehicles for which we have 5-cycle fuel economy data. We will assume that this relationship also applies to those

vehicles for which we do not have 5-cycle data. The third step evaluates changes in FTP and HFET test procedures which accompanied the implementation of the US06 and SC03 testing requirements. The most important change was the removal of a 10 percent increase in tractive road load horsepower which was intended to represent the use of air conditioning in the summer. This effectively increased fuel economy label values with no accompanying change in onroad fuel economy. The vehicles assessed by FHWA were nearly all tested with the 10 percent adjustment in road load, while those in the 5-cycle certification database were not. Therefore, this difference needs to be accounted for when connecting the results of the two previous comparisons.

Overall, the difference between 5-cycle fuel economy and FHWA onroad fuel economy is the combination of the percentage differences from the three comparisons:

(1) Current EPA label fuel economy (with 10 percent road adjustment) to FHWA onroad fuel economy,

(2) 5-cycle fuel economy to current EPA label fuel economy (without 10 percent road load adjustment), and

(3) the effect of the removal of the 10 percent road load adjustment.

FHWA publishes fleet-wide estimates of onroad fuel economy for cars and light trucks in their annual Highway Statistics publication.[51] We will focus on the combined estimates for cars and light trucks here, since various states use different criteria to distinguish between the two vehicle classes. At the same time, the criteria used to distinguish between cars plus light trucks and other vehicles are very consistent. The FHWA definition of light trucks (actually 4-tire, 2-wheel trucks) includes some vehicles which EPA classifies as heavy-duty vehicles. We have adjusted the FHWA estimates upward to provide a more direct comparison. After this adjustment, the FHWA-based estimate of fleet-wide onroad fuel economy for cars and light trucks is 20.3 mpg for 2002 and 20.5 mpg for 2003.

We used the EPA MOBILE6.2 in-use emission model to calculate fleet-wide average EPA combined fuel economy label values for these two years. For both years, average label fuel economy was 21.1 mpg. Thus, for 2002 and 2003, the FHWA-based onroad fuel economy was 4 percent and 3 percent lower than the current combined EPA label value, respectively. Thus, the result of the first step in this process is an indication that the current labeling formulae, based on FTP and HFET testing with the 10 percent road load adjustment, could be over-estimating onroad fuel economy by 3–4 percent.

Moving to the second step, in Table II–5 above, we presented city and highway fuel economy label values using both current and 5-cycle formulae for 423 2003–2005 model year vehicles. The FHWA estimates apply to all driving, both city and highway. Therefore, we are primarily interested in combined city-highway fuel economy values. Also, we are using FHWA estimates for the 2002 and 2003 calendar years, as these are the most recent available. The number of hybrid vehicles on the road was negligible during this timeframe. Therefore, we will only use the 5-cycle fuel economy estimates for the 414 non-hybrid vehicles in our database. There is no need to perform this comparison separately for the mpg-based formulae, since the average fuel economy from the 5-cycle and mpg-based formulae are identical for non-hybrid vehicles.

The combined fuel economy using the current label formulae is a 55/45 harmonic weighting of the current city and highway fuel economy labels. The average combined fuel economy using the current EPA label values for these 414 vehicles is 20.9 mpg. However, it is important to note that the FTP and HFET testing upon which these values are based were performed without the 10 percent increase in road load horsepower to account for air conditioning and other accessories. For the proposed 5-cycle formulae, combined fuel economy is a 43/57 harmonic weighting of the 5-cycle city and highway fuel economies. This city/highway split for the 5-cycle fuel economies is based on:

(1) The assumption that driving generally less than 45 mph is city driving and that above 45 mph is highway driving, and

(2) the description of onroad driving patterns contained in MOVES.

We seek comment on any other data that may indicate what constitutes city and highway driving. The mathematical formula for converting the 5-cycle city and highway fuel economy values into an estimate of average onroad fuel economy is as follows:

$$\text{Average onroad fuel economy} = \frac{1}{\left[\dfrac{0.43}{\text{5-cycle City FE}} + \dfrac{0.57}{\text{5-cycle Highway FE}}\right]}$$

The average combined 5-cycle fuel economy using this formula for the 414 conventional vehicles is 19.2 mpg, which is 8 percent lower than that based on the current label values. This is the result of the second step in the process.

Moving to the third step, prior to the implementation of the Supplemental FTP standards and the running of the US06 and SC03 tests, EPA approximated the occasional load on the engine of the air conditioner and other accessories by increasing the tractive road load horsepower setting on the dynamometer by 10 percent of each vehicle's normal road load. This increase was equivalent to increasing the rolling resistance of the tires and aerodynamic drag of moving the vehicle through the air by 10 percent. When the explicit testing of emissions with the air conditioning system turned on during the SC03 test, EPA removed this 10 percent adjustment on the FTP and HFET tests. This was appropriate for emissions testing, given the direct measurement of emissions with the air conditioning on during the SC03 test. However, since the fuel economy over the SC03 test is not included in the calculation of the fuel economy label values, the removal of the 10 percent adjustment during FTP and HFET testing effectively increased the city and highway label values with no accompanying change in onroad fuel economy.

Using a detailed model of a vehicle's energy use on the road (please see the Draft Technical Support Document for details), we estimate that removing the 10 percent adjustment in road load increased fuel economy over the FTP and HFET by 2 percent and 5 percent, respectively. Decreasing the FTP and

[51] U.S. Department of Transportation, Federal Highway Administration. Highway Statistics 2003. See Table VM–1. Web site: *http://www.fhwa.dot.gov/policy/ohim/hs03/htm/vm1.htm.*

HFET fuel economy values for the 414 conventional vehicles in our 5-cycle certification database by these amounts decreased combined EPA fuel economy on average by 3 percent. The average combined fuel economy using the current label formulae decreased from 20.9 mpg to 20.2 mpg. Thus, instead of decreasing the current combined label value by 8 percent, when considered in terms of test procedures effective for the 2002–2003 onroad fleet, the 5-cycle formulae only decrease label fuel economy by an average of 5 percent. This 5 percent decrease represents the combined effects of steps 2 and 3 in our process.

Overall, then, from step 1, the current label values over-estimate onroad fuel economy per FHWA (with some adjustments by EPA) by 3–4 percent, while the 5-cycle formulae decrease current label values (of the 2002–2003 fleet) by 5 percent. Thus, the proposed 5-cycle formulae should move the combined fuel economy label values to within 1–2 percent of a comparable estimate of fleetwide fuel economy using FHWA techniques.

Next, several governmental and non-governmental organizations perform their own fuel economy assessments. Of these, the American Automobile Association (AAA) and Consumer's Union (CU) have tested the greatest number of vehicles. Oak Ridge National Laboratory (ORNL) has recently begun a program where drivers can submit their own fuel economy measurements via the Internet. Argonne National Laboratory (ANL) has also been operating an extensive hybrid demonstration project for a few years as part of DOE's Freedom Car project.

Each of these estimates of onroad fuel economy have their relative strengths and weaknesses. The strengths of the non-governmental organization testing include the fact that the vehicles are tested on actual roads, usually in traffic and under real environmental conditions. The primary weaknesses of this testing include:

(1) The fact that the driving patterns involved are not typically published, so they may or may not be representative of average U.S. driving,

(2) Vehicles are tested throughout the year, so some vehicles are tested in hot weather and others in cold weather and some under moderate conditions, and

(3) In some cases, the actual test procedures used to measure the volume of fuel consumed during the test are not described, leaving some doubt as to their accuracy. Still, because of the public interest in these estimates, we believed that they should be considered here.

Consumer Report recently published their fuel economy estimates for 303 2000–2005 model year vehicles. Consumer Report makes three fuel economy measurements: one for city driving, one for highway driving and one for a 150-mile trip. They also publish a combined fuel economy value which is a harmonic average of the three fuel economy measurements.

We were able to match 151 of these vehicles with those in our 5-cycle fuel economy database. For these 151 vehicles, we compared Consumer Report's city, highway and combined fuel economy measurements to the analogous current EPA label, 5-cycle and mpg-based fuel economy estimates. The results show that the Consumer Report city fuel economy values are well below both the current label or 5-cycle label values, though the difference for the 5-cycle values are half those of the current label values. The reverse is true for highway fuel economy. The current EPA combined label values average 10 percent higher than the Consumer Report values. However, the average of the combined 5-cycle values is only 1 percent higher than the average combined Consumer Report fuel economy.

More specifically, the vehicles tested by Consumer Report include 6 hybrid vehicles. We have 5-cycle fuel economy estimates for five of these vehicles. A comparison of the Consumer Report, current EPA label and 5-cycle label fuel economy values shows that the current combined EPA label fuel economy values average 27 percent higher than the combined fuel economy measured by Consumer Report. The difference between EPA and Consumer Report combined fuel economy decreases dramatically with the 5-cycle approach. On average, the EPA 5-cycle combined fuel economy is only 5 percent higher than that measured by Consumer Report. This is slightly higher than the zero percent difference found for non-hybrids. Thus, the vehicle-specific 5-cycle approach appears to reflect some of the factors measured with Consumer Report testing which are missed by the current fuel economy tests (FTP and HFET). As expected, the differences increase with the mpg-based approach, since the mpg-based adjustments are based essentially on non-hybrid vehicle results. Additional discussion and analysis of the Consumer Reports data can be found in the Draft Technical Support Document.

As discussed above, AAA also develops its own fuel economy estimates. In their 2004 report, AAA presented their test results and the EPA label values for 163 models. As AAA only develops a single fuel economy estimate for each vehicles (i.e., no separate city or highway estimates), we compared their estimates to a combined mpg-based fuel economy value. As discussed above, the mpg-based city fuel economy was weighted 43 percent and the highway value was weighted 57 percent. We did not compare the 5-cycle fuel economy values to the AAA estimates due to the relatively low number of models which were in both the AAA and EPA certification fuel economy database.

The average mpg-based combined fuel economy for the 163 vehicles was 2 percent higher than the average AAA fuel economy. The combined mpg-based fuel economy was higher than the AAA estimate for 91 models and lower for 71 models. The two estimates matched for one model. These comparisons are quite similar to those between the current label fuel economy values and the AAA values. However, the mpg-based fuel economy more closely matches those of AAA for the two hybrids in the AAA database. For the Insight and Prius, the current combined EPA fuel economy values exceed those of AAA by 6–8 percent. The combined mpg-based fuel economy values straddle the AAA estimates, one being one percent higher and the other being two percent lower.

The ORNL Your MPG data discussed in Section I are similar in nature to the much larger databases analyzed for the 1984 label adjustment rule. Drivers measure their own fuel economy and provide a perceived split of their driving into city and highway categories. The strength of this type of data is the fact that the vehicle is being operated by the owner or regular driver in typical use. The weaknesses are the unknown representativeness of the sample, the unknown nature of the technique used by the owner/driver to measure fuel economy and the short time period over which fuel economy is generally assessed (e.g., a couple of tanks full). In the particular case of the ORNL database, its current size is still small (2544 estimates of fuel economy for 1794 vehicles) compared to those available in 1984, though it is growing daily.

We compared the fuel economy estimates submitted to the ORNL website with the mpg-based fuel economy values. We did not attempt to estimate 5-cycle fuel economy values for these vehicles, as we lacked 5-cycle fuel economy data for most of the vehicles. However, on average for non-hybrid vehicles, the mpg-based values match the 5-cycle values. We combined the mpg-based city and highway values using each driver's estimate of the

percentage which was city and highway. If a driver did not provide an estimate of the breakdown of their driving pattern, we assumed that their driving was 43 percent city and 57 percent highway. We also conducted separate comparisons for conventional gasoline vehicles, hybrids and diesels. The results are shown in Table II–9 below.

TABLE II–9.—YOUR MPG VERSUS CURRENT EPA LABEL FUEL ECONOMY

Vehicle type	Fuel economy (mpg)			
	Number of estimates	Your MPG	MPG-based EPA combined label: vehicle city/hwy weighting	Difference from MPG-based (%)
Conventional Gasoline	2315	23.7	23.4	1.3
Hybrid Gasoline	239	46.1	47.1	−2.2
Diesel	88	41.0	38.8	5.7

As can be seen, diesels appear to perform the best with respect to their mpg-based fuel economy values, outperforming the proposed mpg-based combined label by 5.7 percent. Conventional gasoline vehicles also appear to slightly outperform the mpg-based label values by 1.3 percent. Hybrids are the only category to fall short, but do so by a small margin of 2.2 percent.

The Department of Energy has overseen the real world operation of a number of electric hybrid vehicles for a period of years. The Advanced Vehicle Testing Activity (AVTA), conducted jointly by the Idaho National Laboratory (INL) and the National Renewable Energy Laboratory (NREL), has been benchmarking hybrid electric vehicle performance as part of the FreedomCAR & Vehicle Technologies Program. The strength of the FreedomCAR program testing of hybrid vehicles lies in the fact that the vehicles are operated on the road over long term periods similar to what consumer-purchased vehicles experience, albeit often in commercial applications. Over a million miles of operation have been assessed and careful fuel consumption and mileage records are kept. The weaknesses are that some of the vehicles are in commercial use (e.g., company pool vehicles) for accelerated mileage accumulation and that the vehicles are operated exclusively in the Southwest, mainly Phoenix, Arizona and surrounding areas. Nevertheless, the vehicles are operated just as any other vehicle would be in that application and the vehicles are subject to all of the environmental and roadway factors which affect the fuel economy of typical vehicles, such as winds, rough roads, hills, traffic congestion, etc. Because of the limited geographic area of the program, the vehicles are more likely to experience hot temperatures and air conditioning use than cold temperatures.

The vehicles' operators report mileage and fuel usage to FreedomCAR which posts the monthly and cumulative fuel economy of each electric hybrid fleet on a monthly schedule.[52] Therefore, seasonal changes in fuel economy can be observed. The results of the fleets are shown in Table II–10.

TABLE II–10.—FREEDOMCAR HYBRID FLEET CUMULATIVE VERSUS EPA COMBINED LABEL FUEL ECONOMY

Vehicle	Accumulated mileage	Fleet size	Fuel economy (mpg)				Difference (%)		
			Onroad	EPA combined label [A]					
				Current	5-cycle	MGP-based	Current	5-cycle	MPG-based
2001 Honda Insight	417,000	6	45.2	61.0	51.5	52.6	35	14	16
2002 Toyota Prius	458,000	6	41.0	48.6	.....	.....	19	.....	.....
2003 Honda Civic	378,000	4	37.6	46.3	38.0	40.0	23	1	6
2004 Toyota Prius	102,000	2	44.4	54.6	45.9	46.0	23	3	4
2004 Chevrolet Silverado 2wd	21,000	1	18.5	18.8	.....	.....	2	.....	.....
2004 Chevrolet Silverado 4wd	28,000	1	17.7	16.9	14.9	15.3	−5	−16	−14
2005 Ford Escape 2wd	28,000	1	28.1	33.6	.....	.....	20	.....	.....
2005 Ford Escape 4wd	29,000	1	25.5	29.9	24.1	25.9	17	−5	−2
2005 Honda Accord	62,000	2	27.6	32.3	26.3	29.1	17	−5	5
2005 Lexus RX400h	20,000	2	26.3	28.1	24.8	24.8	7	−6	−6
Average	154,000	2.6	31.2	37.0	32.2	33.4	16	−2	2

[A] Current combined is a 55/45 weighting of city/highway fuel economy. 5-cycle combined is a 43/57 weighting of city/highway fuel economy, as explained further in this section.

As can be seen, EPA's current label formulae over-estimate the onroad fuel economy achieved by all but one of the hybrid vehicle fleets. It should be noted that the values for current combined fuel economy are those from EPA's certification database and are not the official label values. The official label values are even higher due to differences between the worse case vehicles tested over the Supplemental FTP cycles and the average vehicle sold. The largest shortfall was 35 percent for the Honda Insights. The Chevrolet Silverado was the only model which

[52] *http://energy.inel.gov/x-web/other/framed.shtml?http://avt.inel.gov.*

exceeded the current label value of the test vehicle in our certification database. This is likely related to the fact that its hybrid design includes limited fuel economy targeted features. Except for the Chevrolet Silverado, the onroad fuel economy for each fleet never exceeded either the city or highway fuel economy label. This indicates that regardless of whether the vehicles were driven predominantly in city or highway driving modes, other real world factors reduced onroad fuel economy beyond that captured in the FTP and HFET and the current 10 percent and 22 percent adjustment factors.

Table II–10 also presents combined fuel economy values using the proposed 5-cycle and mpg-based formulae for those vehicles for which we have 5-cycle fuel economy data. The proposed combined 5-cycle label values exceed onroad fuel economy for three out of seven models, while the proposed mpg-based values do so for five out of seven models. The average of the differences is very small in both cases. On average, the combined 5-cycle value is 2 percent lower than those measured onroad. However, as mentioned above, the specific vehicles in our 5-cycle database tend to be worse case. For example, the current official label values exceed those shown in Table II–10 by 3 percent. If we increased the combined 5-cycle values commensurately, they would exceed the onroad values by 1 percent. Thus, while both of the proposed approaches do a much more reasonable job at predicting the onroad fuel economy achieved in the DOE FreedomCar program than the current label formulae, the proposed 5-cycle formulae appear to be particularly accurate when compared to the FreedomCar experience.

When analyzing monthly reported fuel economy, large seasonal fluctuations in fuel economy were observed on most of the hybrid fleets. The seasonal fluctuations are especially noticeable on the fleets that had been in service for over one year. The fuel economy during the hot and often humid summer weather months when heavy air conditioning usage could be expected was as much as 15 mpg lower than observed fuel economy during mild Phoenix area winter months. Fuel economy over the SC03 air conditioning test for the three hybrids with the highest rated fuel economy shown in Table II–10 (Prius, Insight and Civic) tends to be 15–20 mpg lower than that over the FTP. No cold weather operation similar to northern states or the Cold FTP (20 °F) was reported which would likely have resulted in further shortfalls.

The FreedomCAR program is continuing to accumulate mileage on all of the 2004 and 2005 models listed above. While the time in service and accumulated mileage is relatively low compared with the original fleets that have completed service, the initial results support similar substantial shortfall likely due to the same real world factors not currently captured during the FTP or HFET.

III. What Major Alternatives Were Considered?

As explained in Section I, the current city and highway test results for fuel economy are adjusted downward by 10 and 22 percent, respectively, to derive the current fuel economy label values. One possible approach that we evaluated would be to simply revise these adjustment factors, presumably to further ''discount'' the test results, to achieve results that more closely mirror real-world fuel economy. However, this is a fundamentally flawed approach that does not solve the problems with the current fuel economy estimates.

There is little doubt that revising the current adjustment factors could result in city and highway fuel economy values that better approximate real-world values on average across the U.S. vehicle fleet. This approach might be more accurate for certain vehicle models. However, the fundamental problem with this approach is that it ignores the variation in how different vehicle models respond to factors that impact fuel economy. As we discussed in Section I, there is a wide variation in how different vehicles respond to factors such as the use of air conditioning, cold temperature operation, and higher speeds and accelerations. For example, in our database of about 420 vehicles, operation on the city test cycle at 20 degrees F resulted in fuel economy that was anywhere from 0 to 40 percent worse than fuel economy achieved on the same test cycle at 75 degrees F. Because there are now additional tests in place (for emissions compliance) that have the ability to measure a vehicle's fuel economy over this wider range of driving operation, we have an opportunity to design the new fuel economy label methodology in a way that relies on these test results, and is thus inherently more vehicle-specific. In this way, our fuel economy test methods would yield results that are not only more accurate across the fleet, but also more reflective of the fuel economy consumers can expect to achieve from a given vehicle in the real-world.

IV. Revisions to the Fuel Economy Label Format and Content

In addition to our proposal to revise the methods for calculating the ''city'' and ''highway'' mpg estimates, we are proposing revisions to the way these estimates and the other information on the label are presented to the consumer.

Our goal is to improve the label format and content so that consumers more readily understand and use it. To gain a better understanding of how consumers are using the current fuel economy label, we conducted a series of focus groups in five cities around the country in March 2005. The input received from the participants confirmed some of our perceptions about weaknesses of the current label, and also brought up some constructive suggestions for improvements that we could address. The contractor that conducted the focus groups issued a report to EPA of their findings, which is included in the docket for this proposed rulemaking.[53]

In the focus groups, we clearly heard that people are very familiar with the big, bold City and Highway estimates on the label. We tested whether consumers preferred to see the estimates continue to be expressed as City and Highway mpg values or replacing the City and Highway designations with a fuel economy range. Consumers agreed that the City and Highway distinction is useful information and wanted it to remain intact. Consumers had a very strong negative reaction to a range, and indicated it was not something they could easily compare to other cars. Thus, we are proposing to retain the City and Highway mpg estimates. As discussed in Section I, our new test methods are designed to reflect the average fuel economy, so the City and Highway mpg estimates on the label will reflect the fuel economy expected to be achieved by half of drivers. We seek comment on whether the average is the appropriate value for the large, bold, City and Highway estimates. In other words, we invite comment on whether it would be more appropriate to capture a greater proportion of consumers' experience by using a lower fuel economy estimate, for example, an estimate that would capture 75 percent, or even a greater percentage, of drivers' experience.

Further, the consumer focus groups indicated that people are not noticing or reading the current ''fine print'' range of fuel economy expressed on today's label. Yet, we believe it is important to

[53] PRR, Inc. ''EPA Fuel Economy Label Focus Groups—Report of Findings,'' prepared for EPA by PRR Inc., March 2005.

continue to report an expected fuel economy range in smaller print, in addition to the City and Highway mpg estimates, so that consumers can better understand how much their fuel economy in actual driving can vary from the estimate. To accompany the City and Highway mileage estimates, we propose to express the range of expected fuel economy as a 10th percentile to a 90th percentile fuel economy. In that way, the range represents 80 percent of driving experience—10 percent of drivers may get fuel economy below the lower end of the range, and 10 percent may get fuel economy greater than the higher end. We seek comment on other approaches to expressing the expected fuel economy range on the label. For example, we ask for comments on whether this range should be wider to capture even more of drivers' experience, such as a 5th percentile to a 95th percentile, which would capture 90 percent of all drivers' fuel economy experience.[54]

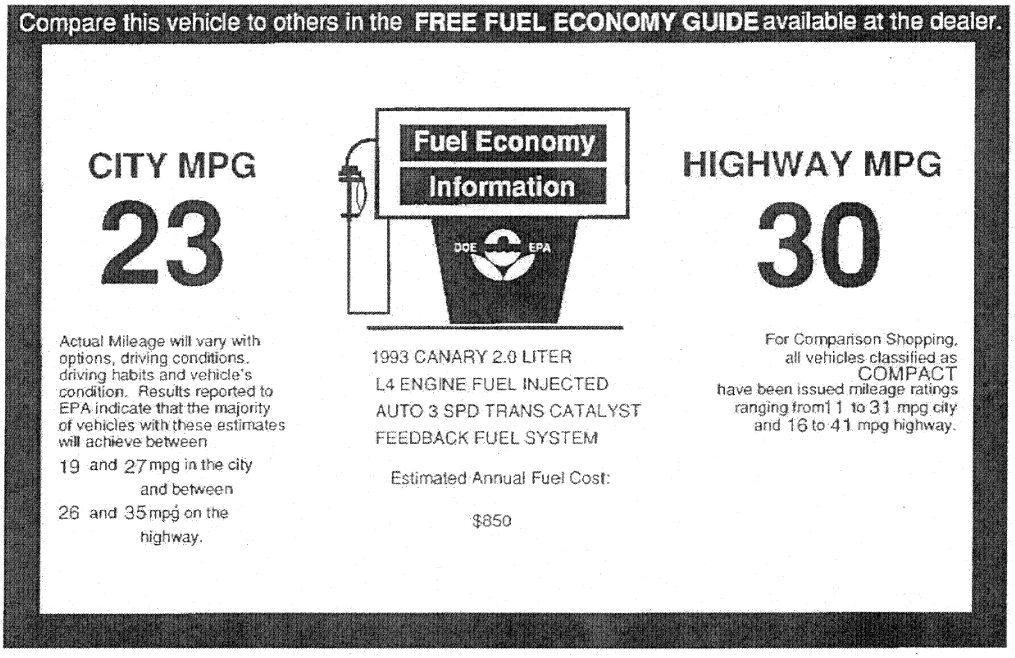
Finally, we are interested in commenters' feedback on what additional information could be made available either in the annual Fuel Economy Guide or the *www.fueleconomy.gov* Web site, administered jointly by EPA and DOE. We recognize that some of the ideas we are presenting here may become too much information to include on the label itself. We would like to make additional information available to those consumers who are most interested in more detail, and the Fuel Economy Guide, or www.fueleconomy.gov Web site, may be good places to include such information. Some have suggested the idea of a fuel economy calculator on the Web site, that would enable consumers to calculate an estimated fuel economy that is more tailored to their specific driving conditions. A similar tool already exists on the Web site in the form of a calculator to estimate individualized annual fuel costs, based on specific cost and mileage data input by the user. A fuel economy calculator could be designed that would allow the user to input their specific driving conditions, such as the amount of time spent with air conditioning on, what climate they live in, how much driving is done under higher speed/aggressive driving conditions, etc. These inputs could go into an algorithm that would estimate the fuel economy for a specific vehicle under the conditions input by the user. For instance, drivers in areas of climactic extremes may want to know the fuel economy impact of driving exclusively in those conditions. EPA requests comments on the merits of adding such a calculator to the fueleconomy.gov Web site, and welcomes further input on how such a tool might best be designed.

Based on input from the focus groups, as well as our own observations from implementing the fuel economy labeling program for the past 20 years, we are proposing to revise the fuel economy label as discussed below. For a point of reference, a sample of the current Fuel Economy Label is provided below, followed by four proposed label formats on which we are requesting comment. Sample A takes a more traditional approach by preserving some of the ''look and feel'' of the current label. Samples B and C are graphical updates and offer different ways of presenting the same information. Sample D has the same look as Sample B, but presents a different option for illustrating the comparable class information. One benefit of adopting a less traditional look is to signal to consumers that the new label design coincides with our new way of calculating the fuel economy estimates.

We are planning to conduct a series of focus groups after evaluating the public comments received on these label designs, to assure that the final design will be understood and useful for consumers. More details about this proposal are in section VIII.B below.

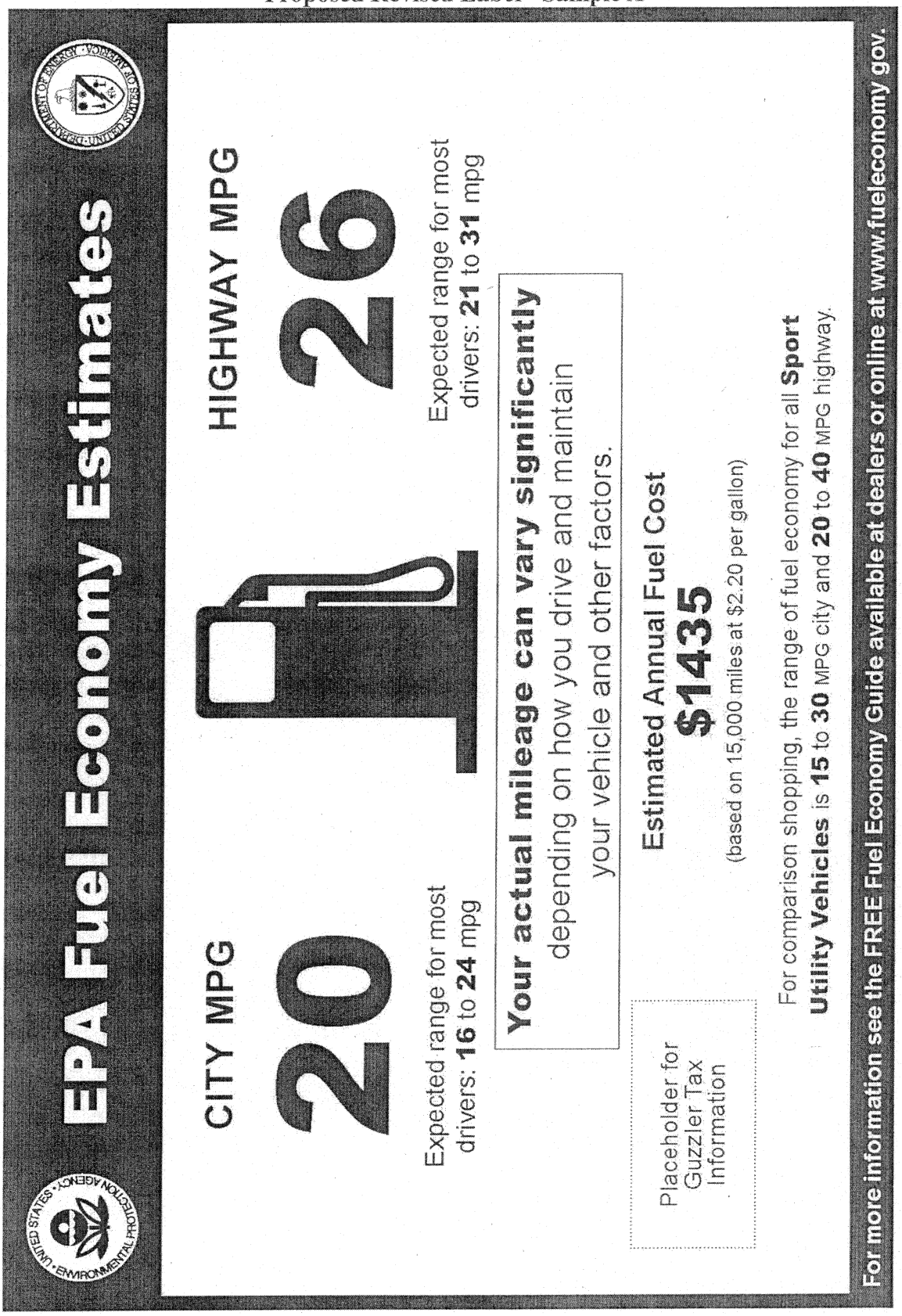
BILLING CODE 6560–50–P

Current Label



[54] Based on the assumption of a normal distribution and available data that allows us to estimate the standard deviation, the 10th and 90th percentiles are equal to the mean ±17 percent, and the 5th and 95th percentiles are equal to the mean ±21 percent.

Proposed Revised Label - Sample A



Proposed Revised Label - Sample B

EPA Fuel Economy Estimates

CITY MPG **20** EXPECTED RANGE FOR MOST DRIVERS **16** TO **24** MPG

HIGHWAY MPG **26** EXPECTED RANGE FOR MOST DRIVERS **21** TO **31** MPG

Your actual mileage can vary significantly depending on how you drive and maintain your vehicle and other factors.

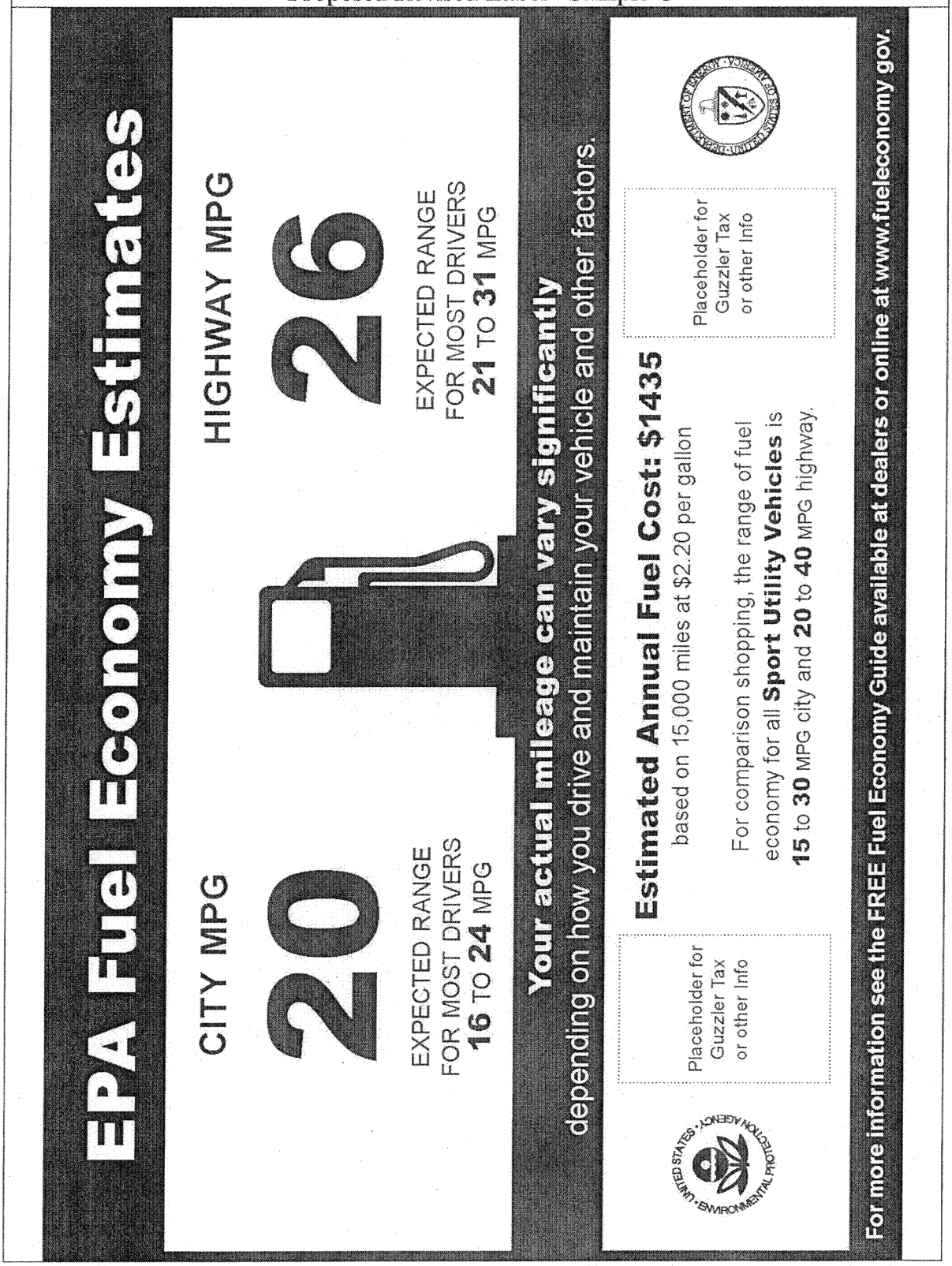
Estimated Annual Fuel Cost: $1435
based on 15,000 miles at $2.20 per gallon

For comparison shopping, the range of fuel economy for all **Sport Utility Vehicles** is **15** to **30** MPG city and **20** to **40** MPG highway.

Placeholder for Guzzler Tax
or Alternative Fuel Information

For more information see the FREE Fuel Economy Guide available at dealers or online at www.fueleconomy gov.

Proposed Revised Label - Sample C



Proposed Revised Label - Sample D

EPA Fuel Economy Estimates

CITY MPG **20** EXPECTED RANGE FOR MOST DRIVERS **16** TO **24** MPG

HIGHWAY MPG **26** EXPECTED RANGE FOR MOST DRIVERS **21** TO **31** MPG

Your actual mileage can vary significantly depending on how you drive and maintain your vehicle and other factors.

Estimated Annual Fuel Cost: $1435
based on 15,000 miles at $2.20 per gallon

Combined fuel economy for this vehicle

23

22 ▼ **40**

Range of combined fuel economy for all **Compacts**

Placeholder for Guzzler Tax
or Alternative Fuel Information

For more information see the FREE Fuel Economy Guide available at dealers or online at www.fueleconomy gov.

BILLING CODE 6560–50–C

A. Estimated Annual Fuel Cost

The EPCA statute requires the label to include the estimated annual fuel cost. EPA's current regulations specify that this information just include the dollar amount, but gives manufacturers the option to also include the per-gallon fuel costs and annual miles driven (i.e., to explain how annual fuel costs were derived). However, most manufacturers do not take that option, so most labels include only the cost number. It was clear from the focus group research that consumers care a lot about this information but currently do not find it adequate. They desired more information about how this cost was determined, including the assumed per-gallon fuel costs and miles-per-year driven. Therefore, we are proposing to require this information on the label in addition to the estimated annual fuel cost. The per-gallon fuel costs and annual miles driven will be that which EPA provides to manufacturers each year via guidance letters.[55] Providing per-gallon fuel costs each year through guidance ensures that the information stays as current as possible while still providing a common basis to allow comparisons of annual fuel cost information across all vehicles. The fuel economy basis on which the estimated annual fuel costs are determined would be the adjusted combined fuel economy (as determined by the proposed weighting of 43 and 57 percent for city and highway, respectively, as discussed in Section II). The label information is proposed to read: ''Estimated Annual Fuel Costs = $XXXX (based on XX,XXX miles at $X.XX per gallon).'' We also seek comment on whether the label text should include the combined fuel economy number as part of the derivation for Estimated Annual Fuel Cost.

B. Fuel Economy of Comparable Vehicles

The EPCA statute requires the label to include the fuel economy of comparable vehicles. This requirement was intended to help car shoppers compare the fuel economy of similar vehicles. EPA's current regulations require that the label include the following statement: ''For comparison shopping, all [vehicles/trucks] classified as [insert category as determined in § 600.315] have been issued mileage ratings ranging from __ to __ mpg city and __ to __ mpg highway.'' Based on the focus group research, it appears that car buyers do not notice this statement since it appears in small print and has lengthy text. Some perceived it as ''fine print,'' and thus less important. There are two ways to address these concerns. The first would shorten the statement to lessen its ''fine print'' look. The sample labels A through C above contain a revised statement as follows: ''For comparison shopping, the range of fuel economy for all [INSERT COMPARABLE CLASS] is __ to __ MPG city and __ to __ MPG highway.''

After completion of the focus groups, we considered another option for presenting the fuel economy of comparable vehicles that might aid consumers by replacing the ''fine print'' text with a graphic representation. This approach would use combined fuel economy as the comparison basis (versus separate city and highway comparisons), to simplify the fuel economy values presented. Combined fuel economy has not previously appeared on the label, but is used as an input to calculate the estimated annual fuel costs. The graphic presentation is similar in concept to DOE's ''EnergyGuide'' label, which has been effectively used for years to illustrate where an electrical appliance falls on an energy-usage comparison scale. Therefore, we believe this visual may be familiar to consumers. A sample label with the graphical presentation of comparable fuel economy appears in the Sample D label above. The graphic would replace the text regarding comparable class fuel economy. We request comment on the merits of this graphical concept for depicting the fuel economy of comparable class vehicles, and whether it would enhance consumers' understanding.

In addition, we welcome comment on whether it would be useful to include additional information, either on the label or a Web site, that would give consumers a better understanding of how a given vehicle's fuel economy compares with the range of fuel economy of other vehicle classes. This may be particularly useful for those consumers shopping for cars across vehicles classes (e.g., SUVs vs. large sedans). However, including this much information on the label may be problematic due to space limitations. The annual Fuel Economy Guide already includes graphical information on the fuel economy range for all comparable classes, so that consumers can identify where a given vehicle fits within these ranges. We welcome input on whether additional information on comparable class fuel economy would be useful, and if so, how best to present that information in a user-friendly way for consumers.

Another change that will help improve the usefulness of this information to consumers is to revise the comparable vehicle class categories themselves, since they have not been updated in twenty years. A discussion of proposed changes to the comparable vehicle classifications is in Section V below.

*C. ''Your mileage will vary * * *'' Range of Expected Fuel Economy Information*

The current label has a statement explaining why actual fuel economy will vary from the EPA estimates, and gives an expected range of fuel economy for that vehicle, determined by ±15 percent of the city and highway estimates. While not statutorily required to be on the label, as discussed in Section I above, EPA included it in the 1984 fuel economy rule since many drivers would not precisely achieve the estimated fuel economy. EPA agrees that it is important to emphasize on the label that the city and highway numbers are estimates and do not necessarily reflect the actual fuel economy a driver can expect at any given time. Providing the range of expected city and highway fuel economy on the label gives the consumer a better understanding of what fuel economy they can expect across a wider spectrum of real-world driving conditions. The current label format does this in a single statement that gives a few reasons why mileage will vary, as well as the range of expected city and highway fuel economy. Unfortunately, this information is often disregarded by car buyers. Similar to the comparable class information, focus group participants viewed this information as ''fine print,'' and as a sort of disclaimer. Once they had taken the time to consider it, the focus groups understood why actual in-use fuel economy may vary from the estimates, and concluded that this type of information was useful.

To improve consumer comprehension, the proposed statement has been reworded and reformatted to be more noticeable. The proposed text for presenting the range of expected fuel economy is ''Your actual mileage can vary significantly depending on how you drive and maintain your vehicle and other factors.'' We propose to place the range of expected fuel economy underneath (or on the side of, depending on the label) the actual city and highway estimates to provide

[55] The estimated annual fuel costs are derived from information provided by DOE's Energy Information Administration. Separate costs are determined for regular and premium gasoline, diesel, CNG, LPG, ethanol (E85), electricity and hydrogen. See EPA's Guidance Letter CCD–05–11 in the Docket for this rulemaking for an example of how EPA transmits this information to manufacturers.

consumers with a clearer understanding of the fuel economy they can expect to achieve on the road. We request comments on the effectiveness of this format in conveying this message, as well as on the specific wording of this statement.

D. Other Format Changes

Based on the focus group research, the current label would benefit from some graphic updating. In the sample labels, we have included a more modern-looking fuel pump. Many focus group participants did not understand that EPA was the source of the fuel economy estimates (many thought that the auto manufacturers or dealers were responsible). Once they did, they thought the association with the government added credibility to the ratings. We believe that more prominent government logos (EPA and DOE), will make it clearer to consumers that these Agencies are responsible for the fuel economy estimates. The web link to the EPA–DOE Fuel Economy Guide Web site, *www.fueleconomy.gov,* has also been added so that interested consumers may obtain additional information related to fuel economy.

V. Other Related Proposals

A. Comparable Class Categories

The EPCA statute requires that the label contain ''the range of fuel economy of comparable automobiles of all manufacturers,'' but does not specify what constitutes ''comparable automobiles.'' [56] Therefore, EPA has discretion to interpret how to best define these categories. The comparable class categories in place today are the same as those established in 1976.[57] Cars were split according to size based on their interior volume (with one exception), and trucks were split according to their utility and GVWR into the following groups:

Cars: Two-seater; mini-compact; compact sedan; medium sedan; large sedan; station wagon.

Trucks: Small pickup truck; standard pickup truck; van; special purpose vehicle.

Clearly, the U.S. vehicle fleet looks significantly different that it did nearly 30 years ago. Since the time these classes were created, there have been many vehicle design changes that are not reflected in the above class designations. For example, the sport utility vehicle (SUV)—one of the most popular vehicle types today—does not even have its own class designation. The same is true for minivans. Another trend in vehicle design is vehicles that defy classification in design and utility. Known commonly as ''crossover'' vehicles, they do not fit neatly into any of EPA's existing classifications. All of the above shortcomings have limited the usefulness of the comparable vehicle fuel economy information on the label. Having more clearly-defined classes that reflect the current market will improve the usefulness of this information on the label. There are several challenges with assigning comparable class categories: we need to accommodate a dynamic market of changing vehicle designs; the categories should be as objective as possible and not rely upon subjective qualities that are difficult to define (such as ''luxury'' or ''sporty''); and there should be enough classes to allow consumers to differentiate, but not so many as to cause confusion.

The following discussion explains the specific issues associated with the existing comparable classes, and how we propose to address them. It should be noted that the comparable vehicle categories are used only for fuel economy labeling, and in no way determine if a vehicle is a ''passenger vehicle'' or ''nonpassenger vehicle'' for the purpose of CAFE compliance. That determination is made by DOT–NHTSA.

1. Create New Classes for SUVs and Minivans

The ''Special Purpose Vehicle'' class was created to contain vehicles that had off-road capability and other features that weren't covered by the pickup truck or van category. Since it was first created, the ''special purpose vehicle'' class has come to include two widely-popular, high-selling, but very different, vehicle types—SUVs and minivans. EPA and DOE have recognized the evolution of these two classes informally by including them in the annual Fuel Economy Guide as subdivisions of the ''special purpose'' vehicle class. The determination of these classes was left to individual manufacturer's discretion.[58] However, these subdivisions are not used on the fuel economy label because EPA's current regulations have clear instructions that manufacturers must use the comparable classes as defined by those regulations. This means a consumer looking at the label on an SUV will see the range of fuel economy for all ''special purpose vehicles.'' We believe it is appropriate to update the comparable class regulations by creating separate classes for SUVs and minivans. We are also proposing to revise the ''special purpose vehicle'' class to capture vehicles that do not fit into any other category.

Minivan: Minivans have not neatly fit into EPA's ''Van'' class due to the way vans are defined in the regulations: ''* * * any light truck having an integral enclosure fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.'' [59] Minivans generally do not meet the last criterion, thus they have been placed in the ''Special Purpose Vehicle'' class. In general, minivans are smaller than full-size vans, and have rear seats that are designed to be easily removable or stowable. Taking those distinguishing characteristics into account, we are proposing that minivans be defined as vehicles which are designed primarily to carry no more than eight passengers having an integral enclosure fully enclosing the driver, passenger, and load-carrying compartments, with a total interior volume at or below 180 cubic feet and rear seats readily removed or folded to floor level to facilitate cargo carrying.

SUV: Sport Utility Vehicles likewise do not fit into the ''van'' class because of the 30 inch protuberance criterion. The class of vehicles which may be closest in design to the SUV is a station wagon, defined in the regulations as ''* * * a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.'' The most significant difference is that SUVs are ''nonpassenger automobiles.'' [60] The proposed definition of SUVs is a nonpassenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, and

[56] See 49 U.S.C. 32908.

[57] See 41 FR 49752, November 19, 1976.

[58] EPA Guidance Letter VPCD–99–08, June 23, 1999, provides guidance to manufacturers on using SUV and minivan designations.

[59] See 40 CFR 600.002–93.

[60] ''Nonpassenger automobile'' is a term used in EPCA and by EPA's current comparable class definitions. It includes vehicles which do not fall under the EPCA definition of passenger automobiles and that are ''capable of off-highway operation that the Secretary decides by regulation (A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and (B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.'' The DOT regulations that further define the distinguishing features of these vehicles are found at 49 CFR 523.5(a). It should be noted that the methods of classification of ''nonpassenger automobiles'' or ''light trucks'' for the purpose of creating comparable vehicle classes for fuel economy labeling are not related to those used to administer the federal emission compliance requirements.

one or more rear seats readily removed or folded to facilitate cargo carrying.

2. Redefine ''Small Pickup Truck'' Class

Pickups are currently divided into ''small'' and ''standard'' categories, with ''small'' pickups distinguished from ''standard pickup truck'' by GVWR (greater than 4500 lbs is ''standard''). For the past several years, no vehicles certified have been classified as ''small pickup trucks.'' To provide better comparable classes for pickup trucks, we are proposing to increase the weight limit distinguishing small and standard standard pickups to 6000 pounds GVWR. Pickups less than 6000 pounds GVWR would be considered ''small'' and those at or above would be considered ''standard.''

3. ''Crossover'' Vehicles

These are vehicles that may not fit neatly into one classification. Examples are SUVs or station wagons that may have characteristics of both classes. Our policy in that regard has been to work with the manufacturer to determine which of the prescribed comparable classes the vehicle is most appropriate. We are concerned that by defining specific parameters for crossover classes, we will be building obsolescence into our regulation. Our preference is to retain our current policy in which manufacturers propose to EPA which of the existing comparable classes their ''crossover'' vehicles best fit, with the caveat that if they advertise within-class fuel economy it must be with the selected class. We request comments on whether we should continue this policy for crossover vehicles or whether we should create a new class.

EPA requests general comments on the proposed modifications to comparable classes, and also welcomes comments on other possible ways to classify vehicles for comparison purposes. Comments should address how the classifications will be useful for the consumer who is comparison shopping.

B. Electronic Distribution of Dealer-Supplied Fuel Economy Booklet

A statutory provision in EPCA requires car dealers to provide to consumers a copy of the annual fuel economy booklet (Fuel Economy Guide).[61] Historically, DOE has printed and sent copies of the Guide to dealers at government expense, although this is not an EPCA requirement. At the time that these EPA regulations were written, the internet was non-existent, and personal computers were not readily available. Today's proposal modifies the ways in which the Fuel Economy Guide can be distributed by giving dealers the option to provide it electronically. There are a number of ways that this can happen. Dealers can present the Guide on an on-site computer that customers can view, or they can provide them with a diskette or CD containing the Guide, or they can print paper copies directly from the government Web site that has the Guide (*www.fueleconomy.gov*). These methods are superior to the current hard-copy method for a number of reasons. First, it spares the government the large expense of printing many thousands of copies and mailing them to dealers. Second, it allows consumers to have more up-to-date information. The deadline for manufacturers to provide fuel economy data for inclusion in the annual printed Guide is generally October of the calendar year prior to the model year (*e.g.* the deadline for the 2005 Guide was October, 2004). In reality, some manufacturers are not able to meet this deadline, due to late introduction of models or other timing issues, so those vehicles will not appear in the printed Guide, which is printed only once per year. However, the electronic version on the Guide posted on the internet is updated regularly to include new models. Thus consumers can get more accurate information from the internet than from the printed Guide. This method has been used on a trial basis for the 2004 and 2005 model years with much success, and EPA is today proposing to codify the electronic dissemination of the Guide. This change would be effective with the 2008 model year. EPA has consulted with DOE on this topic and DOE concurs it would be an effective means of providing information to car buyers.

C. Testing Provisions

1. Testing Requirements for Vehicles Currently Exempt From Certain Emission Tests

Certain vehicles are currently exempt from some of the emission tests that we are including in the 5-cycle method. In order to use the 5-cycle method for these vehicles, additional fuel economy testing provisions are necessary.

a. *Alternative-Fueled Vehicles.* There are two types of alternative-fueled vehicles: (1) Flexible-fuel vehicles (FFVs; also known as dual-fueled or bi-fueled vehicles) that can operate on gasoline or diesel and/or some alternative fuel (i.e., ethanol, methanol, etc.), and (2) dedicated alternative fueled vehicles that operate only on some alternative fuel.

FFVs are subject to the SFTP and Cold CO emission standards and test requirements, but only when operating on gasoline. Therefore, we propose that the fuel economy label values of FFVs when operating on gasoline be determined using the same mpg-based or 5-cycle approaches applicable to dedicated gasoline or diesel fueled vehicles and, thus, additional testing for US06, SC03 and Cold FTP while operating on alternative fuel would not be required. In addition, although the fuel economy values when operating on an alternative fuel are not required to be reported on the label, they are included in the annual Fuel Economy Guide. Accordingly, we propose that the city and highway fuel economy label values must reflect the same adjustment factors relative to FTP and HFET fuel economy, respectively, developed using the applicable mpg-based or 5-cycle approach for gasoline. In other words, if the city FTP fuel economy is 24 mpg for operation on gasoline and the calculated label value using the mpg-based or 5-cycle approach is 20 mpg, then the city label value for operation on alternative fuel would be the FTP fuel economy measured when the vehicle is operated on alternative fuel multiplied by the ratio of 20 over 24.

Dedicated alternative-fueled vehicles are exempt from the SFTP and Cold CO emission standards according to 40 CFR 86.1810(i)(4) and 40 CFR 86.1811–04(g). As a result, these vehicles will not have the SFTP and Cold CO fuel economy data needed to determine 5-cycle fuel economy values. We propose that manufacturers of dedicated alternative-fueled vehicles be able to use the mpg-based approach in 2011 and beyond, as well during 2008–2010 in order to avoid conducting additional tests for fuel economy reasons only. Since the mpg-based approach uses fuel economy values measured in terms of miles per gallon of gasoline or diesel fuel, the fuel economy of dedicated alternative fuel vehicles must be expressed in terms of its gasoline equivalent prior to using the mpg-based formula. Currently, all dedicated alternative-fueled vehicle fuel economy values are expressed in terms of gasoline equivalent. In this case, the fuel economy values for a dedicated alternative vehicle expressed in gasoline equivalents can be directly determined using the mpg-based approach. However, if the fuel economy values for a dedicated alternative vehicle is expressed in alternative fuel equivalents, then, the fuel economy in terms of miles per gallon of the alternative fuel would be adjusted by

[61] See 49 U.S.C. 32908(c)(3).

the ratio of the mpg-based value to the FTP or HFET value, as applicable, just as described above for FFVs.

We are also proposing that manufacturers of dedicated alternative-fueled vehicles may optionally use the 5-cycle approach at their discretion. In this case, all the fuel economy values used in the formulae would be expressed in terms of operation on the alternative fuel. If this option is used, the manufacturer would be required to conduct all applicable 5-cycle test procedures and use both the 5-cycle city and highway calculation methods to determine fuel economy label values.

b. *Diesel Vehicles.* Diesel fuel vehicles are not currently subject to Cold CO emission standards and, thus, do not have a 20 degree Fahrenheit (F) FTP fuel economy result to use in the 5-cycle based approach. Therefore, beginning with the 2008 model year for certification diesel vehicles, we are proposing that a 20 degree F FTP be performed for the purpose of collecting fuel economy data. Accordingly, for a 20 degree FTP only, the manufacturer must use a #1–D (winter-grade) diesel fuel as specified in ASTM D975–04c ''Standard Specification for Diesel Fuel Oils'' [62] and that complies with 40 CFR Part 80,[63] where the level of kerosene added shall not exceed 20 percent. Alternatively, manufacturers may use, with EPA approval, a manufacturer-specified diesel fuel in lieu of conventional diesel fuel under alternate test procedure provisions in 40 CFR § 86.113–94, where the level of kerosene added shall not exceed 20 percent. We request comment on these proposed winter-grade diesel fuel specifications.

We expect that the impact of extending the cold FTP test requirement to light-duty diesel vehicles will be very small, given that there are so few diesel vehicles currently certified. In model year 2006, for example, only five diesel light-duty vehicles were certified for sale in the U.S. Further discussion of how we evaluated this requirement in our estimated cost impacts is contained in Section VI.

2. Modifications to Existing Test Procedures

To ensure that the 5-cycle method is reflective of real-world operating conditions, there are a few minor procedural changes that need to be made to certain existing emission tests procedures. First, we are proposing minor procedural changes in the US06 tests, as described below. Second, we are seeking comment on the issue of requiring manufacturers to run the heater and/or defroster during the cold FTP test. Third, we are proposing to codify the existing practice, which has been done through special test procedure provisions, of requiring four-bag FTP measurements for gasoline-electric hybrid vehicles.

a. *Revisions to US06 Bag Measurements.* The US06 drive cycle contains elements of both city and highway driving, yet the exhaust sample is collected in only one sample, or ''bag.'' In order to more accurately reflect the city portion of the drive cycle into the city fuel economy estimate, and the highway portion of the cycle into the highway fuel economy estimate, we are proposing a revised test protocol that would require collecting the exhaust sample into two bags. This has the benefit of more accurately capturing how a vehicle's fuel economy would be impacted over the various types of driving reflected in the cycle, but with very minimal cost impact.

In assessing the split of US06 into two bags, we undertook a test program to determine that it was technically feasible to do so, and that it would not have a significant impact on emission results for compliance purposes. To do this, we evaluated the effects of conducting a US06 split-phase emissions test versus the current US06 single-phase emission test on ten vehicles at EPA's National Vehicle and Fuel Emissions Laboratory (NVFEL) in Ann Arbor. Based on this evaluation, the US06 split-phase sampling methodology was shown to be feasible for fuel economy purposes and required only initial software reprogramming for the revised sampling periods and minimal hardware changes to enable the emissions analyzers to perform US06 split-phase emission testing. In addition, creating a US06 split-phase sampling period did not result in any significant difference in criteria pollutant emissions results. The full report on this US06 split phase evaluation program is available in the docket.[64] Our proposed changes to the US06 test procedure to incorporate the split-phase sampling are found in the proposed regulations at 40 CFR 86.159–08. We have also accounted for any additional costs to manufacturers in making the necessary changes to their testing equipment and data collection software in our cost analysis discussed in Section VI. We estimate these costs to be minimal.

b. *Heater/Defroster Usage During the Cold FTP.* The current Cold FTP conducted at 20 degrees F includes the option to use the heater and/or defroster.[65] While we understand that some manufacturers today are using the heater and/or the defroster during the Cold FTP, it is not mandatory and therefore subject to inconsistent usage across manufacturers and vehicle lines. We expect that, in the real-world, it would be highly unusual for drivers not to use the heater/defroster when the temperature is cold, including at 20 degrees F experienced during the Cold FTP. In order to more closely reflect real world operation, and to ensure a level playing field across manufacturers and vehicle lines when performing this test, we are seeking comment on requiring that manufacturers operate the heater and/or defroster during the Cold FTP.

To better understand the potential impact of heater and/or defroster usage on fuel economy at cold temperatures, we attempted to determine the fuel economy impacts of heater and defroster usage at 20 degrees F. In order to quantify the impact of heater and/or defroster usage on fuel economy, we conducted testing through the Southwest Research Institute (SwRI). This program measured the impacts of heater and defroster operation on fuel economy for three vehicles during a 20 degree Cold FTP. We compared the fuel economy results with heater/defroster operational with the results of the heater/defroster non-operational on each vehicle. The Cold FTP fuel economy with the heater/defroster on was significantly lower than that with the heater/defroster off, ranging from −6.0 percent (~1 mile per gallon lower on a non-hybrid vehicle) to −17.9 percent (~8 miles per gallon lower on a hybrid vehicle). We did not observe a significant impact on CO or other measured emissions as a result of the use of the heater/defroster on the Cold FTP. The results of this test program indicated that different vehicles were impacted more than others, suggesting that it would be important to capture the impact on fuel economy of heater

[62] ASTM International Specification D975–04C ''Standard Specification for Diesel Oil Fuels'' (November 1, 2005) describes the seven grades of diesel fuel oils suitable for various types of diesel engines. This specification is under the jurisdiction of ASTM Committee D02 on Petroleum Products and Lubricants and is the direct responsibility of subcommittee D02.E0 on Burner, Diesel, Non-Aviation Gas Turbine, and Marine Fuels.

[63] 40 CFR Part 80—Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engines and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Final Rule and Regulation of Fuels and Fuel Additives: Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years.

[64] Mitcham, A. & Fernandez, A., ''Feasibility of Revising the US06 Test Cycle into a Split Phase Sampling Test Procedure'' U.S. EPA, Office of Transportation & Air Quality, 2005.

[65] See 40 CFR 86.230–94(f).

and defroster use during cold conditions. The full report of this test program is contained in the docket.[66]

Since heater and defroster operation can have an additional impact on fuel economy beyond cold temperature operation, and since these accessories are used in the real-world at cold temperatures including 20 degrees F, we are seeking comment on how this condition should be captured in the fuel economy label estimates. Specifically, we are seeking comment on requiring the use of heater/defroster during the Cold FTP, rather than to continue to allow it as an option only.

There are many approaches for how the heater and defroster usage could be incorporated into the Cold FTP test procedures, including specifying appropriate fan speed settings, timing of turning on the heater/defroster during the test, and accounting for various vehicle climate control designs. One concept that we have considered is as follows. This concept would involve starting the test with the airflow directed to the windshield for optimal defrosting, the airflow source set to outside air (not recirculation), and the air temperature set to high. Approximately two minutes into the test, the fan speed could be turned to maximum and left there for the duration of the test. This would mimic typical driver behavior in that we expect many drivers typically would not turn the fan to maximum until the engine is producing some level of heat, which most vehicles will do within a couple minutes of driving. Automatic climate control systems could be set to achieve an inside air temperature of 72 degrees F, and the fan speed, if independently selectable, would be operated as described above. Vehicles with multiple zones (either driver and passenger, or front and rear) could be required to operate the controls for all zones as described above. We anticipate that some climate control systems might not be compatible with these instructions, and to address these we could allow a manufacturer to request the use of special test procedures, subject to EPA approval. We seek comment on this possible concept for how heater/defroster usage could be specified in the cold FTP procedure, as well as comments on alternative approaches.

c. *Gasoline-Electric Hybrid Vehicle Testing Provisions.* The FTP consists of two parts, referred to in the regulations as the ''cold start'' test and the ''hot start'' test. Each of these parts is divided into two periods, or ''phases'': a ''transient'' phase and a ''stabilized'' phase. Because the stabilized phase of the hot start test is assumed to be identical to the stabilized phase of the cold start test for conventional vehicles, only the cold start stabilized phase is typically run. These ''phases'' are often called ''bags,'' terminology that results from the sample bags in which the exhaust samples are collected. The phases are run in the following order: cold start transient (Bag 1), cold start stabilized (Bag 2), and hot start transient (Bag 3). The virtual hot start stabilized phase (Bag 4) is accounted for in the emission and fuel economy results mathematically by including Bag 2 twice in the calculation.

Because gasoline-electric hybrid vehicles have two energy sources that can be combined in many ways, EPA and manufacturers recognized that the assumption regarding the equivalence of the stabilized phases of the hot and cold start tests may not be valid for hybrid vehicles. Consequently, we have been requiring vehicles with gasoline-electric hybrid systems to perform the complete set of four phases of the FTP, under existing provisions in the regulations that allow special test procedures. However, rather than continue to do this under the special test procedures, we believe it is appropriate to codify this practice in the testing regulations. Additionally, the 5-cycle formula for gasoline-electric hybrid vehicles requires the four phases of the FTP as inputs for these vehicles. Therefore, we are proposing to require that gasoline-electric hybrid vehicles conduct all four phases of the FTP for both emissions and fuel economy testing. We propose that four bags be required for all tests using the FTP, including the cold temperature FTP, for those vehicles defined as hybrid electric vehicles. We request comment on this proposal, and on whether use of the phrase ''hybrid electric vehicle'' is sufficient to describe and identify vehicles for which the four-bag FTP would be required.

D. Voluntary Fuel Economy Labeling for Vehicles Exceeding 8500 Pounds GVWR

The EPCA statute explicitly excludes automobiles weighing over 8500 pounds GVWR from fuel economy labeling requirements.[67] However, over the past several years there has been a growing market for these heavier vehicles, which fall into a number of utility classes, such as SUVs, pickups, and vans (including heavier versions of such models as Hummer, Ford Excursion, Chevy Silverado and Dodge Ram). We believe that consumers would be interested in using fuel economy estimates for these vehicles when comparison shopping. The rising fuel prices of recent times certainly have increased consumer awareness of the costs associated with owning a vehicle.

We encourage auto manufacturers of vehicles weighing over 8,500 pounds to voluntarily provide fuel economy information for these vehicles, and we request comments on the value of such a voluntary program and how it could be implemented.

E. Consideration of Fuel Consumption vs. Fuel Economy as a Metric

EPCA defines fuel economy as ''* * * the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator under section 32904(c) of this title.'' Thus, EPA's fuel economy information program has always expressed fuel efficiency in miles per gallon. It is a metric that Americans have come to know and understand.

Notwithstanding this requirement, a few auto manufacturers have suggested that it may be more meaningful to express fuel efficiency in terms of consumption (e.g., gallons per 100 miles) rather than in terms of economy (miles per gallon). A fuel consumption metric is currently used in Canada and in Europe. Fuel consumption numbers speak directly to the amount of fuel used, to which a consumer can relate in terms of cost when filling up.

A fuel consumption metric also directly reflects the impacts of fuel economy variations in very fuel efficient vehicles. Consumers that are disappointed that their highly-rated vehicle may have fuel economy that is 5 mpg lower than expected may have fewer concerns if they saw that a 5 mpg difference for that vehicle really amounts to very little difference in actual fuel consumption (and, therefore, cost at the pump) compared with a 5 mpg difference in a vehicle with a lower mpg rating. For example, a very fuel-efficient vehicle at 60 miles per gallon will burn 1.67 gallons per 100 miles, whereas a vehicle achieving 5 mpg less, at 55 miles per gallon, will burn 1.82 gallons per 100 miles, an increase in consumption of only 0.15 gallons every 100 miles. On the other hand, a less fuel-efficient vehicle at 25 miles per gallon will burn 4 gallons every 100 miles, whereas a vehicle achieving 5 mpg less, at 20 mpg, will burn 5 gallons per 100 miles, an increase of consumption of 1 gallon every 100 miles.

[66] Fernandez, A. & Mitcham, A., ''Fuel Economy Impacts of Interior Heater/Defroster Usage on Conventional and Hybrid Gasoline powered Vehicles'', U.S. EPA, Office of Transportation & Air Quality, 2005.

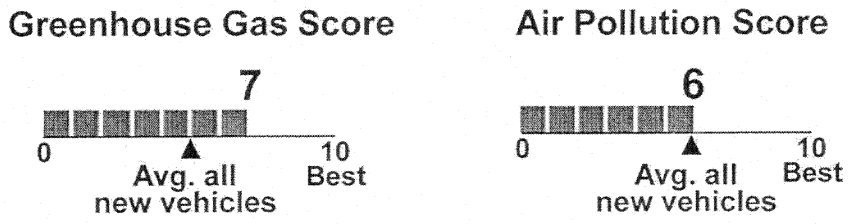
[67] See 49 U.S.C. 32908(a)(1).

The ''estimated annual fuel cost'' information on the label is actually based on a fuel consumption metric: the cost of X number of gallons consumed over 15,000 miles. Thus we believe the inclusion of the estimated annual fuel cost on the label is already a valuable metric for consumers, which relates directly to fuel consumption. Given that we are obligated statutorily to report fuel economy in terms of miles per gallon, we cannot change the metric on the fuel economy label. Moreover, we believe it would be a long-term educational process for consumers to begin to relate to the fuel consumption metric of gallons per mile. There may be an option to also provide additional fuel consumption information in the annual Fuel Economy Guide.

Our experience is that consumers are very comfortable with the miles-per-gallon estimates given on the label. We are concerned that consumers would not understand a different fuel efficiency metric and, without a long-term, comprehensive public awareness campaign, it would be very confusing to the public. We also understand that some manufacturers plan to pursue some public outreach and education in regard to using the fuel consumption metric. At this time we view presenting fuel consumption information on the vehicle label as a future, long-term effort. We request comments on the gallons-per-mile fuel consumption metric, and how it could be best used and presented publicly, including comments on whether it should be included in the Fuel Economy Guide.

F. Environmental Information on Fuel Economy Labels

For a number of years, EPA has presented fuel economy and emissions information about vehicles in the form of a 0–10 rating system on the Green Vehicle Guide Web site (*www.epa.gov/greenvehicles*). This information has been well-received (over 50 million ''hits'' to date) and apparently well-understood by consumers, judging from feedback about this site and third-party market research comparing interest in and comprehension of such information. Some have suggested that adding similar information to the fuel economy label would provide the consumer with a more complete picture of the overall environmental performance of that vehicle and provide a more graphical way to make vehicle-to-vehicle comparisons. It would also complete the information loop by allowing consumers to identify the vehicles on the dealer lot that match those on the Web site with the environmental criteria they are seeking. This would be useful because many vehicle models are available in multiple versions that receive different Air Pollution and Greenhouse Gas scores, and it is often difficult for the consumer to identify these variations when buying a vehicle. When conducting the focus group research discussed in Section IV above, participants were shown examples of fuel economy labels that included environmental ratings (for Air Pollution and Greenhouse Gas) and asked for their impressions. Although there was some confusion due to the newness of the information, there was general agreement that it could be useful in the future. At this time, we are not proposing to require environmental ratings on fuel economy labels. However, we are considering implementing a voluntary environmental labeling program and request comments on this subject. An example of how the environmental scores could look is below:



VI. Projected Impacts of the Proposed Requirements

A. Information and Reporting Burden

The information and reporting burden associated with this rule occurs within the context of EPA's motor vehicle certification program. Current regulations require manufacturers to submit fuel economy information to EPA in conjunction with this program. Manufacturers must submit an application for emission certification prior to production. The application describes the major aspects of the proposed product line, technical details of the emission control systems, and the results of tests to indicate compliance with the emissions limitations. The application and supporting test results are reviewed and, if appropriate, a certificate of conformity is issued.

Some of the product information used to verify emission compliance is also used, in conjunction with additional tests and projected sales, to establish fuel economy ratings. Currently, the pertinent emissions tests for fuel economy purposes are the FTP and the HFET. The vehicles that are tested for emissions purposes and for fuel economy purposes are overlapping but not identical classes: because fuel economy ratings are based on the sales-weighted fuel economy ratings, different vehicles may sometimes be tested to determine an appropriate average so that its ratings accurately reflect the entire fleet.

The fuel economy ratings used to comply with the labeling requirements for new vehicles (40 CFR Part 600, Subpart D) are listed by model type. These ratings are computed as the sales weighted harmonic mean of the ''base levels'' within each model type, which in turn are calculated as the sales weighted harmonic mean of the configurations/sub-configurations within each base level. The criteria for determining a configuration, sub-configuration, and base level are set forth in the regulations. This procedure is intended to ensure that the most representative fuel economy values are posted on new vehicles. New vehicles are sold and therefore labeled and rated by the manufacturer's model designation rather than the categories that correspond to the test groups and fuel economy vehicles that are used for generating fuel economy data.

No changes are contemplated by this rulemaking in the methodology for the sales-weighted calculations based on configurations of vehicles summarized in the preceding paragraph. That methodology would simply be extended to the additional test cycles that would be included in calculating the label values under the five-cycle proposal. For example, US06, SC03, and Cold FTP data would be grouped and sales

weighted in the same way that FTP and HFET data are now. The system for reporting and calculating the resultant fuel economy label values would be the same as that currently in use. Likewise, the requirement for manufacturers to publish the fuel economy information on the labels of new vehicles would be the same as the current requirements. Consequently, the purely reporting burdens are those associated with updating information formats and databases to comply with the new fuel economy computations.

To the extent that information costs are taken to include new capital costs associated with gathering the information under the rule, as is the case for purposes of the Paperwork Reduction Act, these costs must also be considered. These information burdens corresponding to the various parts of the proposal are discussed below. Additional details are given in the Draft Technical Support Document.

1. Incorporation of Other Driving Conditions Into the City and Highway Fuel Economy Label Calculations

The proposal would require calculation of fuel economy values based on the five-cycle formulae beginning with model year 2011 for some engine families. As discussed in detail elsewhere in this preamble, for model years 2008 through 2010, manufacturers may use the mpg-based calculation for the five-cycle fuel economy values or they may conduct voluntary testing. For model year 2011 and after, if the five-cycle city and highway fuel economy values for an emission data vehicle group are within 4 percent and 5 percent of the mpg-based regression line, respectively, then all the vehicle configurations represented by the emission data vehicle (e.g., all vehicles within the vehicle test group) would use the mpg-based approach. Vehicles within a test group falling outside the 5 percent tolerance band for highway fuel economy values would be required to conduct US06 tests; those falling outside the city fuel economy band would be required to conduct SC03, US06, and Cold FTP tests. In addition, we expect that some of these vehicles falling outside the tolerance level may be eligible to estimate fuel economy for a given test through the application of analytically derived fuel economy (ADFE) values. Some data is currently available for vehicles that have conducted all five tests; based on this data, EPA has estimated the number of vehicles for which additional testing would be required because they fall outside the 4 and 5 percent bands, as discussed below.

We have prepared a range of burden estimates for this analysis and the discussion will mention minimum and maximum burden scenarios. These low and high estimates are intended to provide EPA's estimate of the outer boundaries of the likely testing and information costs, and EPA solicits comments on the basis of these estimates, including the number of additional tests and costs for performing those tests and additional tests that will be likely under the proposal.

a. *Testing Burden for 2008 through 2010 Model Years.* EPA estimates no additional tests during MY 2008 through MY 2010 based on the fact that the mpg-based fuel economy estimates will be available for all manufacturers. No additional testing would be required because manufacturers simply apply the mpg-based scale of adjustments to the same FTP and HFET test results that they otherwise would conduct for the fuel economy labeling program. While manufacturers have the option of conducting and reporting full five-cycle test results, such tests are not required, and most manufacturers have indicated it is unlikely they will do so. This cost analysis is limited to burdens that are mandated by the proposal.

b. *Testing Burden for 2011 and Later Model Years.* Based on MY 2004 data, 1250 fuel economy vehicles were tested with the FTP and highway fuel economy tests. (The figure is approximate because the city FTP test may be used and recorded primarily as a fuel economy test, an emissions test, or both.) Data show that 330 Supplemental FTP (US06 and SC03) tests were conducted and 220 Cold CO tests. Consequently, if all fuel economy vehicles were required to conduct full five-cycle tests, approximately 920 additional Supplemental FTP tests and 1,030 Cold CO tests would be required. EPA estimates, based on an analysis of our 423 vehicle dataset, that 8 percent of the test groups will fall outside a band of ⟨≡~ 4 percent of the regression for the city test and 23 percent outside a band of ⟨≡~ 5 percent of the highway regression. Taking the 2004 numbers above as a baseline, 92 percent of the additional SC03 and Cold CO tests otherwise required would be avoided for city fuel economy; 77 percent of the additional USO6 tests would be avoided. Thus, for example, the initial estimate of increased testing burden for SC03 would be 8 percent of the difference between 1250 and 330.

The estimated cost impact of requiring cold FTP testing for light-duty diesel vehicles (as discussed in Section V.C.1.b) is small. As an example, in model year 2006, only five light-duty diesel vehicles were certified for sale in the U.S. A total of eight city/highway tests were performed on those vehicles to determine fuel economy estimates. As applied to the 2006 model year, our proposal would require that an additional eight cold FTP tests be performed in addition to the city/highway tests. Our cost analysis has accounted for additional cold FTP testing across the entire automotive industry, including diesel vehicles.

Finally, the high and low estimates under these assumptions are generated by differing estimates of the effect of another feature that will be available for MY 2011 and after: an expanded use of analytically derived fuel economy (ADFE) as an alternative to conducting vehicle tests. Current guidance (CCD–04–06) limits ADFE to 20 percent of the values that would otherwise be derived from tests; the 1250 test baseline already excludes such analytically derived results. Expanded ADFE guidance will be prepared in time for MY 2011 to allow for derivation of fuel economy values for some of the additional test cycles that otherwise would be required as described above. The low and high burden estimates assumes that 20 percent and 0 percent of the additional tests would thereby be avoided, respectively.

c. *Cost Analysis.* The information and paperwork burden, consistent with the Paperwork Reduction Act, is considered to consist of labor hours and costs, operations and maintenance (O&M) costs, and costs associated with gathering, reporting, and storing the information newly mandated by this rule. These costs include the costs associated with gathering the information that has to be reported to EPA, such as test results, and the capital costs needed to construct and maintain facilities to conduct the tests. It does not include other burdens associated with compliance with the fuel economy requirements of federal law and regulations. The analysis below follows this conceptualization and considers capital, labor and O&M associated with testing, and one-time startup costs primarily for information technology and paperwork, in turn.

i. *Capital Costs.* For capital costs, the largest component of the information burden estimate, we have used an FTP facility cost of $4 million per facility able to perform 750 US06 tests per year, a cost of $9 million for an environmental test facility able to conduct 300 to 428 SC03 tests per year, and $10 million for an environmental facility able to conduct 300 to 428 Cold

FTP tests per year. The new tests were deemed to require these facilities in proportion to the number of tests needed, and the costs were then annualized over ten years with a seven percent depreciation. This is likely a very conservative assumption since it does not attempt to account for the current excess capacity that exists in manufacturers' current test facilities. We assume that there is no excess capacity in our analysis. Furthermore, consistent with other information burden analyses for the emissions and fuel economy programs, we have considered these as ongoing rather than startup costs (i.e., as the facilities depreciate they are continually being replaced). Annualized and depreciated over ten years at seven percent, these capital costs per year under the above analysis are $0 for each of model years 2008, 2009 and 2010, and range from $524,000 to $866,000 per year for model years 2011 and after.

ii. *Labor and Operations and Maintenance (O&M) Costs.* For the labor and O&M costs of conducting tests, costs and hours for the differing categories are derived from prior Information Collection Requests submitted for EPA's light duty certification program. Those estimates are based on the number of tests and the hours of labor used at EPA's testing facility combined with industry data supplied in response to questionnaires; these have been somewhat adjusted to reflect current information. These costs are estimated to range from $1,860 to $2,441 per test. These costs per test are applied to the numbers of tests estimated under the minimum and maximum scenarios above, and amount to $606,000 to $757,000 and 8,800 to 11,000 hours per year for MY 2011 and after.

iii. *Startup Costs.* The incremental startup costs and hours, in contrast, are considered to be one-time costs beginning with model year 2008. These startup burdens are primarily information technology and paperwork costs involving familiarization with the new data reporting requirements and reformatting management information systems to carry out and report the necessary data and calculations. All these burdens are add-ons to well established reporting requirements: manufacturers already submit data to EPA on all five test cycles, have the option of applying analytically derived fuel economy numbers, and report vehicle class determinations and supporting information. These costs also include one-time costs for implementing US06 split phase sampling, as described in Section V of this preamble, which entails software and instrumentation reprogramming and a limited number of US06 validation tests. EPA estimates all startup costs, depreciated at 7 percent and annualized over ten years, as $526,100 to $614,900 and 3,800 to 4,700 hours.

2. Revised Label Format and New Information Included

The reporting and recordkeeping requirements associated with the fuel economy label are set forth in 40 CFR sections 600.312 to 600.314. These sections require that manufacturers supply EPA with the label values and the data used to derive them, and provide schedules for the updating of this information. Under the proposed rule, these values will be recalculated and new data will be submitted. The costs for these efforts are very minimal and are addressed above. There will be a one-time set-up charge associated with the new label format based on the effort required for each manufacturer to apply the new EPA templates to the labels they must print. This cost item has been included in the paperwork startup costs portion of the cost analysis.

3. Reporting of Fuel Economy Data for SC03, US06 and Cold CO Tests

Current regulations do not require manufacturers to measure and report fuel economy values for vehicles undergoing the SC03, US06, and Cold FTP. The proposed rule would require fuel economy values to be reported, along with the existing reporting requirements, under these tests whenever they are conducted. Providing this additional information is not expected to involve any additional capital or operating costs for manufacturers because the fuel economy data can be obtained without any modification of these test procedures and without the need for any new testing equipment. The only burden associated with this new requirement would be an initial startup paperwork burden of modifying information and reporting systems to report and store the fuel economy results for these tests. These burdens are included within the paperwork and information burden estimate in Section VI.A.1 above.

4. Impact on Confirmatory Testing

Confirmatory testing is additional testing performed either by EPA or by the manufacturer to confirm the results of the initial vehicle tests. EPA regulations describe confirmatory testing of fuel economy vehicles in 40 CFR 600.008–01 and of emission certification vehicles in 40 CFR 86.1835–01. We are not proposing to change those regulations in today's proposal, but we need to consider the potential burden impact of today's proposal based on these existing regulations. There are two primary considerations.

First, the regulations permit EPA to perform confirmatory testing of any vehicle. EPA's policy is to randomly test a small percentage of vehicles and other targeted vehicles (such as new-technology vehicles or previously uncertified models). EPA performs confirmatory testing on roughly ten percent of the vehicles that the manufacturers test. The cost to manufacturers associated with EPA confirmatory testing includes the cost of preparing and transporting vehicles to EPA testing facilities. (EPA bears the burden of testing). EPA is not proposing to increase the number of vehicles it targets for confirmatory testing; thus no additional burden is anticipated.

Second, manufacturers are required to perform their own confirmatory testing using criteria specified in the regulations, including failed or high emission levels, unexpectedly high fuel economy, fuel economy leader within class, and fuel economy near the Gas Guzzler tax threshold. The only criterion that could potentially cause an increase in the number of manufacturer-performed confirmatory tests under the proposal is failed or high emission levels. This is because more US06, SC03 and Cold CO tests will be needed to determine the label estimates, thus increasing the possibility for failed or high emission levels. This possibility is slight, however, and very difficult to quantify. Thus we do not anticipate any additional burden. In the event that confirmatory testing is increased as a result of today's proposed rule, this will be reflected in the next renewal request for EPA information collection authorization.

B. Fees

Under the Clean Air Act, EPA collects fees to cover its costs of issuing certificates of conformity for the classes of vehicles and engines covered by this proposal. On May 11, 2004, EPA updated its fees based upon a study of the costs associated with its motor vehicle and engine compliance program (69 FR 51402). At the time that cost study was conducted the current rulemaking was not considered.

The proposed rule does not place additional burden upon the EPA. There may be a slight increase in compliance testing when the rule is initially implemented, but it is expected to be minimal. Because EPA does not expect an increase in the costs of the motor

vehicle and compliance program at this time, there will be no increase in the fees collected as a result of this proposal. We may need to add additional testing capacity at our laboratory facilities in the future. EPA will monitor its compliance testing and associated costs and, if necessary, in the future may change fees by rulemaking to include these new costs.

C. Aggregate Costs

Aggregate annual costs, as discussed above and summarized in Table VI–1 below, are estimated to be between $526,000 and $2.2 million.

TABLE VI–1.—AGGREGATE COSTS

Cost element	MY 2008 through MY 2010		MY 2011 and after	
	Minimum	Maximum	Minimum	Maximum
Test Volume	$0	$0	$605,672	$757,090
Facilities	0	0	524,112	866,111
Startup	526,128	614,928	526,128	614,928
Total	526,128	614,928	1,655,122	2,238,129

VII. Public Participation

This rule is being proposed under the authority of the Energy Policy and Conservation Act (EPCA),[68] and Section 774 of the Energy Policy Act of 2005.[69] We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How and To Whom Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under **DATES** above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposal, we encourage you to suggest and analyze alternate approaches to meeting the goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the body of your comment. Submit your comments within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section VI.B below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically

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

a. *EPA Dockets.* To submit comments to EPA's electronic public docket, go directly to the Federal Docket Management System at *http://www.regulations.gov* and follow the online instructions for submitting comments. Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0169. The system is an ''anonymous access'' system, which means we will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you send to the mailing address identified in Section VI.A.2 below. Avoid the use of special software, characters, and any form of encryption.

2. By Mail

Send your comments to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2005–0169.

3. By Hand Delivery or Courier

Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2005–0169. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be confidential business information (CBI) electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Attention Docket No. EPA–HQ–OAR–2005–0169. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

[68] See 49 U.S.C. 32908.

[69] See Pub. L. 109–58, 119 Stat. 835 (2005).

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

C. Will There Be a Public Hearing?

We will hold a public hearing on this proposal on March 3, 2006 in Ann Arbor, Michigan. The hearing will start at 10 a.m. and continue until testimony is complete. See **ADDRESSES** above for location and phone information.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days before the hearing. You should estimate the time you need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notification we receive. This schedule will be available on the morning of each hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 the Agency 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 this Executive Order. The Executive Order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A Draft Technical Support Document has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents prepared by EPA have been assigned EPA ICRs number 0783.48 (OMB control number 2060–0104) and 2211.01.

1. ICR #0783.48

The information collection burden associated with this rule (testing, recordkeeping and reporting requirements) is estimated to total between 3,703 and 15,634 hours yearly, and between $1,639,965 and $2,222,183 yearly ($510,181 to $598,982 for each of calendar years 2008 and 2009). This includes $10,290,300 in one-time startup and ongoing capital costs for test facilities annualized over ten years and depreciated at 7 percent for the highest estimate. The annual costs and hours for information collection activities by a given manufacturer under any of the options in this proposed rule depend upon manufacturer-specific variables, such as the number of different test groups and the number of vehicles tested for fuel economy determinations. The estimated number of likely respondent manufacturers is 35. The responses will be submitted annually as a part of the existing EPA certification and fuel economy process. 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.

2. ICR #2211.01

EPA is planning to conduct a series of focus groups as a result of comments received on the proposed label design formats. The specific questions to be asked of the groups will depend upon the comments received, but will generally fall into the areas described in the following two sections.

a. *Fuel Economy Background Questions.* These questions will be designed to assess the respondents' familiarity with the current fuel economy label and to lay the groundwork for the discussion about the revised labels. Examples of possible questions are: Have they seen the city and highway numbers anywhere else besides the label? If so, where? What do the various pieces of information on the label mean? Is this information useful? What is their overall opinion of the label? What improvements would they make?

b. *Questions About New Label Designs.* These questions could be either about those designs proposed by EPA or variations thereof, if indicated by the comments received on the proposal. Examples of possible questions are: What is their first impression of the label? Do they think the new label(s) looks better than the old label? Is it more easy to understand and, if so, why? Is any of the information presented in a better way or a more confusing way? Is any one of the alternatives better/worse than the others?

The information from the focus groups would be used as additional information to guide EPA in

determining the final fuel economy label format. The burden associated with conducting the focus groups can be roughly estimated, based on the assumption that there would be 10 groups total with 9 participants in each group. The groups would be situated at about 5 different geographical locations. Each group would take about 2 hours, with an additional 2 hours allotted for traveling and screening. The participants would be chosen based on some very nominal screening criteria, such as having a valid driver's license and owning or leasing a vehicle. The screening would be done via telephone, and take no longer than 30 minutes. Thus the burden associated with the focus groups would be approximately 4.5 hours per participant, for a total of about 405 burden-hours.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes these ICRs, under Docket ID number EPA–HQ–OAR–2005–0169. Submit any comments related to the ICRs for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after February 1, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by March 3, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration (SBA) by category of business using North America Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. A small business that manufactures automobiles has a NAIC code of 336111. Based on Small Business Administration size standards, a small business for this NAIC code is defined as a manufacturer having less than 1000 employees. Out of a total of approximately 80 automotive manufacturers subject to today's proposal, EPA estimates that approximately 10 of these could be classified as small entities based on SBA size standards. Unlike large manufacturers with complex and diverse product lines, we expect that the small entities (generally these are vehicle importers and vehicle converters) will be able use the results of tests they are already conducting for emissions compliance to satisfy the proposed fuel economy labeling requirements. Therefore, we expect that these small entities will face minimal additional burden due to the proposed fuel economy labeling requirements.

Independent Commercial Importers (ICIs) have averaged about 50 imported engine families per year for the last three model years. There are approximately 10 ICIs subject to today's proposal. If we assume that the ICIs and other small entities account for five percent of the vehicle models for which fuel economy labels are needed (a proportion that is certainly an overestimate, but useful for placing an upper bound on the estimated cost impacts for small entities), then these entities must generate about 65 different fuel economy labels. Using the total estimated costs from Section VI of this preamble, the average annual cost per labeled vehicle configuration is about $1280–$1760, and the total annual cost for 20 small entities can be estimated to be $85,000–$114,000. The total average annual cost for an individual importer or small manufacturer can therefore be estimated to be a maximum of $4,250–$5,700. We have recently collected data on the currently operating small entities in the ICI and vehicle conversion categories; this data indicates that the average annual revenue for these companies is approximately $4.8 million. Therefore, the projected cost increase is a maximum of 0.12 percent of the average revenue for small importers or manufacturers. Because of the limited range of vehicle configurations typically offered by these small entities, we believe that the maximum cost for these entities will be even lower than the low end of the ranges shown above. Our methodology for estimating costs in Section VI assumes that manufacturers have diverse product lines, and thus ultimately will need to perform some level of additional testing in 2011 and later model years. Using costs based on such an assumption will tend to overestimate costs for ICIs and vehicle converters, who typically produce or import a single model or configuration.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Additionally, there are numerous existing regulatory relief provisions in the emissions compliance regulations for such small entities. Those provisions remain in effect and would not be impacted by today's proposed rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and to 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 of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in expenditures of more than $100 million to the private sector in any single year. We believe that this proposed rule represents the least costly, most cost effective approach to achieve the goals of the proposed rule. The costs are discussed in Section VI and in the Draft Technical Support Document.

E. Executive Order 13132: Federalism

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

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on expressed or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This rule does not have tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and impose compliance costs only on engine manufacturers and ship builders. Tribal governments will be affected only to the extent they purchase and use equipment with regulated engines. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant effect on the supply, distribution, or use of energy. As specifically stated in section I.D, the proposed regulations do not affect the CAFE program. The proposed regulations do not require manufacturers to improve or otherwise change the fuel economy of their vehicles. The purpose of this proposal is to provide consumers with better information on which to base their vehicle purchasing decisions.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

IX. Statutory Provisions and Legal Authority

Statutory authority for the fuel economy labeling program proposed today can be found in 42 U.S.C. 7401–7671q.

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedure, Electric power, Fuel economy, Labeling, Reporting and recordkeeping requirements.

Dated: January 10, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, we propose to amend parts 86 and 600 of title 40 of the Code of Federal Regulations as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

2. A new § 86.158–08 is added to read as follows:

§ 86.158–08 Supplemental Federal Test Procedures; overview.

The procedures described in §§ 86.158–08, 86.159–08, 86.160–00, and 86.162–00 discuss the aggressive driving (US06) and air conditioning (SC03) elements of the Supplemental Federal Test Procedures (SFTP). These test procedures consist of two separable test elements: A sequence of vehicle operation that tests exhaust emissions with a driving schedule (US06) that tests exhaust emissions under high speeds and accelerations (aggressive driving); and a sequence of vehicle operation that tests exhaust emissions with a driving schedule (SC03) which includes the impacts of actual air conditioning operation. These test procedures (and the associated standards set forth in subpart S of this part) are applicable to light-duty vehicles and light-duty trucks.

(a) Vehicles are tested for the exhaust emissions of THC, CO, NO_X, CH_4, and CO_2. For diesel-cycle vehicles, THC is sampled and analyzed continuously according to the provisions of § 86.110.

(b) Each test procedure follows the vehicle preconditioning specified in § 86.132–00.

(c) *US06 Test Cycle.* The test procedure for emissions on the US06 driving schedule (see § 86.159–00) is designed to determine gaseous exhaust emissions from light-duty vehicles and light-duty trucks while simulating high speed and acceleration on a chassis dynamometer (aggressive driving). The full test consists of preconditioning the engine to a hot stabilized condition, as specified in § 86.132–00, and an engine idle period of 1 to 2 minutes, after which the vehicle is accelerated into the US06 cycle. A proportional part of the diluted exhaust is collected continuously in two bag samples, one representing US06 city driving and the other representing US06 highway driving, for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler. For petroleum-fueled diesel-cycle vehicles for which THC is sampled and analyzed continuously according to the provisions of § 86.110, the analytical system shall be configured to calculate THC for the US06 City phase and the US06 Highway phase as described in § 86.159–08.

(d) *SC03 Test Cycle.* The test procedure for determining exhaust emissions with the air conditioner operating (see § 86.160–00) is designed to determine gaseous exhaust emissions from light-duty vehicles and light-duty trucks while simulating an urban trip during ambient conditions of 95 °F, 100 grains of water/pound of dry air (approximately 40 percent relative humidity), and a solar heat load intensity of 850 W/m^2. The full test consists of vehicle preconditioning (see § 86.132–00 paragraphs (o)(1) and (2)), an engine key-off 10 minute soak, an engine start, and operation over the SC03 cycle. A proportional part of the diluted exhaust is collected continuously during the engine start and the SC03 driving cycle for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler.

(e) The emission results from the aggressive driving test (§ 86.159–08), air conditioning test (§ 86.160–00), and a FTP test (§ 86.130–00 (a) through (d) and (f)) (conducted on a large single roll or equivalent dynamometer) are analyzed according to the calculation methodology in § 86.164–08 and compared to the applicable SFTP emission standards in subpart A of this part (§§ 86.108–00 and 86.109–00).

(f) These test procedures may be run in any sequence that maintains the applicable preconditioning elements specified in § 86.132–00.

3. A new § 86.159–08 is added to read as follows:

§ 86.159–08 Exhaust emission test procedures for US06 emissions.

(a) *Overview.* The dynamometer operation consists of a single, 600 second test on the US06 driving schedule, as described in appendix I, paragraph (g), of this part. The vehicle is preconditioned in accordance with § 86.132–00, to bring it to a warmed-up stabilized condition. This preconditioning is followed by a 1 to 2 minute idle period that proceeds directly into the US06 driving schedule during which continuous proportional samples of gaseous emissions are collected for analysis. The US06 test is divided into three periods collected in two bag samples. The first period, representing the first portion of city driving, terminates at the end of the deceleration which is scheduled to occur at 128 seconds of the driving schedule. The second period, representing highway driving, starts at the conclusion of the first phase of city driving and terminates at the end of the deceleration which is scheduled to occur at 493 seconds of the driving schedule. The third period, representing the second portion of city driving, consists of the remainder of the driving schedule including engine shutdown. The first period and the third period are collected in one bag sample, representing ''US06 city'' driving, and the second period is collected in a second bag sample, representing ''US06 highway'' driving. If engine stalling should occur during cycle operation, follow the provisions of § 86.136–90 (engine starting and restarting). For gasoline-fueled Otto-cycle vehicles, the composite samples collected in bags are analyzed for THC, CO, CO_2, CH_4, and NO_X. For petroleum-fueled diesel-cycle vehicles, THC is sampled and analyzed continuously according to the provisions of § 86.110. Parallel bag samples of dilution air are analyzed for

THC, CO, CO_2, CH_4, and NO_X. For petroleum-fueled diesel-cycle vehicles for which THC is sampled and analyzed continuously according to the provisions of § 86.110, the analytical system shall be configured to calculate THC for the US06 City phase and the US06 Highway phase as described in § 86.159–08.

(b) *Dynamometer activities.* (1) All official US06 tests shall be run on a large single roll electric dynamometer, or an approved equivalent dynamometer configuration, that satisfies the requirements of § 86.108–00.

(2) Position (vehicle can be driven) the test vehicle on the dynamometer and restrain.

(3) Required US06 schedule test dynamometer inertia weight class selections are determined by the test vehicles test weight basis and corresponding equivalent weight as listed in the tabular information of § 86.129–94(a) and discussed in § 86.129–00(e) and (f).

(4) Set the dynamometer test inertia weight and roadload horsepower requirements for the test vehicle (see § 86.129–00(e) and (f)). The dynamometer's horsepower adjustment settings shall be set to match the force imposed during dynamometer operation with actual road load force at all speeds.

(5) The vehicle speed as measured from the dynamometer rolls shall be used. A speed vs. time recording, as evidence of dynamometer test validity, shall be supplied on request of the Administrator.

(6) The drive wheel tires may be inflated up to a gauge pressure of 45 psi (310 kPa), or the manufacturer's recommended pressure if higher than 45 psi, in order to prevent tire damage. The drive wheel tire pressure shall be reported with the test results.

(7) The driving distance, as measured by counting the number of dynamometer roll or shaft revolutions, shall be determined for the test.

(8) Four-wheel drive vehicles will be tested in a two-wheel drive mode of operation. Full-time four-wheel drive vehicles will have one set of drive wheels temporarily disengaged by the vehicle manufacturer. Four-wheel drive vehicles which can be manually shifted to a two-wheel mode will be tested in the normal on-highway two-wheel drive mode of operation.

(9) During dynamometer operation, a fixed speed cooling fan with a maximum discharge velocity of 15,000 cfm will be positioned so as to direct cooling air to the vehicle in an appropriate manner with the engine compartment cover open. In the case of vehicles with front engine compartments, the fan shall be positioned within 24 inches (61 centimeters) of the vehicle. In the case of vehicles with rear engine compartments (or if special designs make the above impractical), the cooling fan(s) shall be placed in a position to provide sufficient air to maintain vehicle cooling. The Administrator may approve modified cooling configurations or additional cooling if necessary to satisfactorily perform the test. In approving requests for additional or modified cooling, the Administrator will consider such items as actual road cooling data and whether such additional cooling is needed to provide a representative test.

(c) The flow capacity of the CVS shall be large enough to virtually eliminate water condensation in the system.

(d) Practice runs over the prescribed driving schedule may be performed at test point, provided an emission sample is not taken, for the purpose of finding the appropriate throttle action to maintain the proper speed-time relationship, or to permit sampling system adjustment.

(e) Perform the test bench sampling sequence outlined in § 86.140–94 prior to or in conjunction with each series of exhaust emission measurements.

(f) *Test activities.* (1) The US06 consists of a single test which is directly preceded by a vehicle preconditioning in accordance with § 86.132–00. Following the vehicle preconditioning, the vehicle is idled for not less than one minute and not more than two minutes. The equivalent dynamometer mileage of the test is 8.0 miles (1.29 km).

(2) The following steps shall be taken for each test:

(i) Immediately after completion of the preconditioning, idle the vehicle. The idle period is not to be less than one minute or not greater than two minutes.

(ii) With the sample selector valves in the ''standby'' position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(iii) Start the CVS (if not already on), the sample pumps, the temperature recorder, the vehicle cooling fan, and the heated THC analysis recorder (diesel-cycle only). The heat exchanger of the constant volume sampler, if used, petroleum-fueled diesel-cycle THC analyzer continuous sample line should be preheated to their respective operating temperatures before the test begins.

(iv) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

(A) For gaseous bag samples (except THC samples), the minimum flow rate is 0.17 cfm (0.08 liters/sec).

(B) For THC samples, the minimum FID (or HFID in the case of diesel-cycle vehicles) flow rate is 0.066 cfm (0.031 liters/sec).

(C) CFV sample flow rate is fixed by the venturi design.

(v) Attach the exhaust tube to the vehicle tailpipe(s).

(vi) Start the gas flow measuring device, position the sample selector valves to direct the sample flow into the exhaust sample bag, the dilution air sample bag, turn on the petroleum-fueled diesel-cycle THC analyzer system integrator, mark the recorder chart, and record both gas meter or flow measurement instrument readings, (if applicable).

(vii) Place vehicle in gear after starting the gas flow measuring device, but prior to the first acceleration. Begin the first acceleration 5 seconds after starting the measuring device.

(viii) Operate the vehicle according to the US06 driving schedule, as described in appendix I, paragraph (g), of this part. Manual transmission vehicles shall be shifted according to the manufacturer recommended shift schedule, subject to review and approval by the Administrator. For further guidance on transmissions see § 86.128–00.

(ix) At the end of the deceleration which is scheduled to occur at 128 seconds, simultaneously switch the sample flows from the ''US06 city'' bags and samples to the ''US06 highway'' bags and samples, switch gas flow measuring device No. 1 (and the petroleum-fueled diesel hydrocarbon integrator No. 1 and mark the petroleum-fueled diesel hydrocarbon recorder chart if applicable) to ''standby'' mode, and start gas flow measuring device No. 2 (and the petroleum-fueled diesel hydrocarbon integrator No. 2 if applicable). Before the acceleration which is scheduled to occur at 136 seconds, record the measured roll or shaft revolutions.

(x) At the end of the deceleration which is scheduled to occur at 493 seconds, simultaneously switch the sample flows from the ''US06 highway'' bags and samples to the ''US06 city'' bags and samples, switch off gas flow measuring device No. 2 (and the petroleum-fueled diesel hydrocarbon integrator No. 2 and mark the petroleum-fueled diesel hydrocarbon recorder chart if applicable), and start gas flow measuring device No. 1 (and the petroleum-fueled diesel hydrocarbon integrator No. 1 if applicable). Before the acceleration which is scheduled to occur at 501

seconds, record the measured roll or shaft revolutions and the No. 2 gas meter reading or flow measurement instrument. As soon as possible transfer the ''US06 highway'' exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.140–94 obtaining a stabilized reading of the bag exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(xi) Turn the engine off 2 seconds after the end of the last deceleration (i.e., engine off at 596 seconds).

(xii) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 1 (and the petroleum-fueled diesel hydrocarbon integrator No. 1 and mark the petroleum-fueled diesel hydrocarbon recorder chart if applicable) and position the sample selector valves to the ''standby'' position. Record the measured roll or shaft revolutions and the No. 1 gas meter reading or flow measurement instrument.

(xiii) As soon as possible, transfer the ''US06 city'' exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.140–94 obtaining a stabilized reading of the bag exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(xiv) Immediately after the end of the sample period, turn off the cooling fan, close the engine compartment cover, disconnect the exhaust tube from the vehicle tailpipe(s), and drive the vehicle from dynamometer.

(xv) The CVS or CFV may be turned off, if desired.

4. A new § 86.164–08 is added to read as follows:

§ 86.164–08 Supplemental Federal Test Procedure calculations.

(a) The provisions of § 86.144–94(b) and (c) are applicable to this section except that the NO_X humidity correction factor of § 86.144–94(c)(7)(iv) must be modified when adjusting SC03 environmental test cell NO_X results to 100 grains of water (see paragraph (d) of this section). These provisions provide the procedures for calculating mass emission results of each regulated exhaust pollutant for the test schedules of FTP, US06, and SC03.

(b) The provisions of § 86.144–94(a) are applicable to this section. These provisions provide the procedures for determining the weighted mass emissions for the FTP test schedule (Y_{wm}).

(c)(1) When the test vehicle is equipped with air conditioning, the final reported test results for the SFTP composite (NMHC+NO_X) and optional composite CO standards shall be computed by the following formulas.

(i) $Y_{WSFTP}=0.35(Y_{FTP}) + 0.37(Y_{SC03})+0.28(Y_{US06})$

Where:

(A) Y_{WSFTP}=Mass emissions per mile for a particular pollutant weighted in terms of the contributions from the FTP, SC03, and US06 schedules. Values of Y_{WSFTP} are obtained for each of the exhaust emissions of NMHC, NO_X, and CO.

(B) Y_{FTP}=Weighted mass emissions per mile (Y_{wm}) based on the measured driving distance of the FTP test schedule.

(C) Y_{SC03}=Calculated mass emissions per mile based on the measured driving distance of the SC03 test schedule.

(D) Y_{US06}=Calculated mass emissions per mile, using the summed mass emissions of the ''US06 city'' phase (sampled during seconds 1–128 and seconds 494–600 of the US06 driving schedule) and the ''US06 highway'' phase (sampled during seconds 129–493 of the US06 driving schedule), based on the measured driving distance of the US06 test schedule.

(ii) Composite (NMHC+NO_X) $=Y_{WSFTP}(NMHC)+Y_{WSFTP}(NO_X)$

Where:

(A) $Y_{WSFTP}(NMHC)$=results of paragraph (c)(1)(i) of this section for NMHC.

(B) $Y_{WSFTP}(NO_X)$=results of paragraph (c)(1)(i) of this section for NO_X.

(2) When the test vehicle is not equipped with air conditioning, the relationship of paragraph (c)(1)(i) of this section is:

(i) $Y_{WSFTP}=0.72(Y_{FTP})+0.28(Y_{US06})$

Where:

(A) Y_{WSFTP}=Mass emissions per mile for a particular pollutant weighted in terms of the contributions from the FTP and US06 schedules. Values of Y_{WSFTP} are obtained for each of the exhaust emissions of NMHC, NO_X. and CO.

(B) Y_{FTP}=Weighted mass emissions per mile (Y_{wm}) based on the measured driving distance of the FTP test schedule.

(C) Y_{US06}=Calculated mass emissions per mile, using the summed mass emissions of the ''US06 city'' phase (sampled during seconds 1–128 and seconds 494–600 of the US06 driving schedule) and the ''US06 highway'' phase (sampled during seconds 129–493 of the US06 driving schedule), based on the measured driving distance of the US06 test schedule.

(ii) Composite (NMHC+NO_X)= $Y_{WSFTP}(NMHC)+Y_{WSFTP}(NO_X)$

Where:

(A) $Y_{WSFTP}(NMHC)$=results of paragraph (c)(2)(i) of this section for NMHC.

(B) $Y_{WSFTP}(NO_X)$=results of paragraph (c)(2)(i) of this section for NO_X.

(d) The NO_X humidity correction factor for adjusting NO_X test results to the environmental test cell air conditioning ambient condition of 100 grains of water/pound of dry air is:

$KH\ (100)=0.8825/[1-0.0047(H-75)]$

Where:

H=measured test humidity in grains of water/pound of dry air.

PART 600—FUEL ECONOMY OF VEHICLES

5. The authority citation for part 600 is revised to read as follows:

Authority: 49 U.S.C. 32901–23919q.

Subpart A—[Amended]

6. A new § 600.001–08 is added to read as follows:

§ 600.001–08 General applicability.

(a) The provisions of this subpart are applicable to 2008 and later model year automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

7. A new § 600.002–08 is added to read as follows:

§ 600.002–08 Definitions.

3-bag FTP means the Federal Test Procedure specified in 40 CFR Part 86, with three sampling portions consisting of the cold-start transient (''Bag 1''), stabilized (''Bag 2''), and hot-start transient phases (''Bag 3'').

4-bag FTP means the 3-bag FTP, with the addition of a sampling portion for the hot-start stabilized phase (''Bag 4'').

5-cycle means the FTP, HFET, US06, SC03 and cold temperature FTP tests as described in subpart B of this part.

Administrator means the Administrator of the Environmental Protection Agency or his authorized representative.

Alcohol means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination.

Alcohol-fueled automobile means an automobile designed to operate exclusively on alcohol.

Alcohol dual fuel automobile means an automobile:

(1) Which is designed to operate on alcohol and on gasoline or diesel fuel;

(2) Which provides equal or greater energy efficiency as calculated in accordance with § 600.510(g)(1) while operating on alcohol as it does while operating on gasoline or diesel fuel;

(3) Which, for model years 1993 through 1995, provides equal or superior energy efficiency, as determined in § 600.510(g)(2) while operating on a mixture of alcohol and gasoline or diesel fuel containing 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel; and

(4) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR part 538.

Automobile means:

(1) Any four-wheel vehicle propelled by a combustion engine using onboard fuel, or by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices (rechargeable using energy from a source off the vehicle such as residential electric service);

(2) Which is manufactured primarily for use on public streets, roads, or highways (except any vehicle operated on a rail or rails);

(3) Which is rated at not more than 8,500 pounds gross vehicle weight, which has a curb weight of not more than 6,000 pounds, and which has a basic vehicle frontal area of not more than 45 square feet; or

(4) Is a type of vehicle which the Secretary of Transportation determines is substantially used for the same purposes.

Auxiliary emission control device (AECD) means an element of design as defined in part 86 of this chapter.

Average fuel economy means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

Axle ratio means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

Base level means a unique combination of basic engine, inertia weight class and transmission class.

Base vehicle means the lowest priced version of each body style that makes up a car line.

Basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

Battery configuration means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy device.

Body style means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e., front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations in 49 CFR part 571. Station wagons and light trucks are identified as car lines.

Calibration means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

Car line means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows, except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

Certification vehicle means a vehicle which is selected under § 86.084–24(b)(1) of this chapter and used to determine compliance under § 86.084–30 of this chapter for issuance of an original certificate of conformity.

City fuel economy means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure.

Cold temperature FTP means the test performed under the provisions of Subpart C of 40 CFR Part 86.

Combined fuel economy means:

(1) For the purpose of determining manufacturer's average fuel economy under Supart F of this part, the term means fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively.

(2) For the purpose of determining estimated annual fuel costs under § 86.600–307(f)) the term means the fuel economy value for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted at .43 and .57 respectively.

(3) For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

Dealer means a person who resides or is located in the United States, any territory of the United States, or the District of Columbia and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

Derived 5-cycle fuel economy means the 5-cycle fuel economy derived from the FTP-based city and HFET-based highway fuel economy by means of the equation provided in § 600.115–08 of this part.

Drive system is determined by the number and location of drive axles (e.g., front wheel drive, rear wheel drive, four wheel drive) and any other feature of the drive system if the Administrator determines that such other features may result in a fuel economy difference.

Electrical charging system means a device to convert 60Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

Electric traction motor means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

Energy storage device means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

Engine code means a unique combination, within an engine-system combination (as defined in part 86 of this chapter), of displacement, carburetor (or fuel injection) calibration, distributor calibration, choke calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

Federal emission test procedure (FTP) refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in part 86 for the respective model year, which are used to derive city fuel economy data.

FTP-based city fuel economy means the fuel economy determined in § 600.113–08 of this part, on the basis of FTP testing.

Fuel means:

(1) Gasoline and diesel fuel for gasoline- or diesel-powered automobiles; or

(2) Electrical energy for electrically powered automobiles; or

(3) Alcohol for alcohol-powered automobiles; or

(4) Natural gas for natural gas-powered automobiles.

Fuel economy means:

(1) The average number of miles traveled by an automobile or group of automobiles per volume of fuel consumed as computed in § 600.113 or § 600.207; or

(2) The equivalent petroleum-based fuel economy for an electrically powered automobile as determined by the Secretary of Energy.

Fuel economy data vehicle means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

Gross vehicle weight rating means the manufacturer's gross weight rating for the individual vehicle.

Hatchback means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

Highway fuel economy means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure.

Highway fuel economy test procedure (HFET) refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in subpart B of this part and which are used to derive highway fuel economy data.

HFET-based fuel economy means the fuel economy determined in § 600.113–08 of this part, on the basis of HFET testing.

Inertia weight class means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of part 86 of this chapter.

Label means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with subpart D of this part.

Light truck means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5. This term is interchangeable with ''non-passenger automobile''.

Minivan means an automobile which is designed primarily to carry no more than eight passengers having an integral enclosure fully enclosing the driver, passenger, and load-carrying compartments, with a total interior volume at or below 180 cubic feet, and rear seats readily removed or folded to floor level to facilitate cargo carrying.

Model type means a unique combination of car line, basic engine, and transmission class.

Model year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term ''model year'' means the calendar year.

Motor controller means an electronic or electro-mechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

Natural gas-fueled automobile means an automobile designed to operate exclusively on natural gas.

Natural gas dual fuel automobile means an automobile:

(1) Which is designed to operate on natural gas and on gasoline or diesel fuel;

(2) Which provides equal or greater energy efficiency as calculated in § 600.510(g)(1) while operating on natural gas as it does while operating on gasoline or diesel fuel; and

(3) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR part 538.

Nonpassenger automobile means a light truck.

Passenger automobile means any automobile which the Secretary of Transportation determines is manufactured primarily for use in the transportation of no more than 10 individuals.

Pickup truck means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

Production volume means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

Rounded means a number shortened to the specific number of decimal places in accordance with the ''Round Off Method'' specified in ASTM E 29 (Incorporated by reference as specified in § 600.011–93).

SC03 means the test procedure specified in 40 CFR 86.160–00.

Secretary of Transportation means the Secretary of Transportation or his authorized representative.

Secretary of Energy means the Secretary of Energy or his authorized representative.

Sport utility vehicle (SUV) means a light truck with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, and one or more rear seats readily removed or folded to facilitate cargo carrying.

Station wagon means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

Subconfiguration means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

Transmission class means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic); number of forward gears used in fuel economy testing (e.g., manual four-speed, three-speed automatic, two-speed semi-automatic); drive system (e.g., front wheel drive, rear wheel drive; four wheel drive), type of overdrive, if applicable (e.g., final gear ratio less than 1.00, separate overdrive unit); torque converter type, if applicable (e.g., non-lockup, lockup, variable ratio); and other transmission characteristics that may be determined to be significant by the Administrator.

Transmission configuration means the Administrator may further subdivide within a transmission class if the Administrator determines that sufficient fuel economy differences exist. Features such as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed may be used to further distinguish characteristics within a transmission class.

Test weight means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of part 86 of this chapter.

Ultimate consumer means the first person who purchases an automobile for purposes other than resale or leases an automobile.

US06 means the test procedure as described in 40 CFR 86.159–08.

Van means any light truck having an integral enclosure fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

Vehicle configuration means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

Vehicle-specific 5-cycle fuel economy means the fuel economy calculated according to the procedures in § 600.114–08 of this part.

8. A new § 600.006–08 is added to read as follows:

§ 600.006–08 Data and information requirements for fuel economy vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, adjusted exhaust emission levels, and test fuel property values as specified in § 600.113–93 except as specified in paragraph (h) of this section.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modification (if any) form the vehicle configuration in which the mileage was accumulated. (For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.) If the vehicle was previously used for testing for compliance with part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle, with respect to which data are submitted:

(A) Has been tested in accordance with applicable test procedures,

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed, and

(C) Is in compliance with applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make it available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, a description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances.

(iv) In the case of electric vehicles, a copy of calibrations for the electric motor, motor controller, battery configuration, or other components on the test vehicle as well as the design tolerances.

(v) If calibrations for components specified in paragraph (b)(2)(iii) or (iv) of this section were submitted previously as part of the description of another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of 40 CFR part 86 (other than those chosen in accordance with 40 CFR 86.1829–01(a) or 40 CFR 86.1845, the FTP, highway, US06, SC03 and cold temperature FTP fuel economy results, as applicable, from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and these test results adjusted in accordance with paragraph (g) of this section.

(3) For diesel vehicles tested to meet the requirements of 40 CFR part 86, data from a cold temperature FTP, performed in accordance with 600.111–08(e), using the fuel specified in 600.107–08(c).

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in 40 CFR 86.087–21 or 40 CFR 86.1844–01 as applicable, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g)(1) The manufacturer shall adjust all test data used for fuel economy label calculations in subpart D and average fuel economy calculations in subpart F for the classes of automobiles within the categories identified in paragraphs (a)(1) through (6) of § 600.510. The test data shall be adjusted in accordance with paragraph (g)(3) or (4) as applicable.

(2) [Reserved]

(3) The manufacturer shall adjust all test data generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000mi} = FE_T[0.979 + 5.25 \times 10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000mi}$=Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T=Tested fuel economy value rounded to the nearest 0.1 mpg.

mi=System miles accumulated at the start of the test rounded to the nearest whole mile.

(4) For vehicles with 6,200 miles or less accumulated, the manufacturer is not required to adjust the data.

9. A new § 600.007–08 is added to read as follows:

§ 600.007–08 Vehicle acceptability.

(a) All certification vehicles and other vehicles tested to meet the requirements of 40 CFR part 86 (other than those chosen per 40 CFR 86.080–24(c) or 40 CFR 86.1829–01(a) as applicable, are considered to have met the requirements of this section.

(b) Any vehicle not meeting the provisions of paragraph (a) of this section must be judged acceptable by the Administrator under this section in order for the test results to be reviewed for use in subpart C or F of this part. The Administrator will judge the acceptability of a fuel economy data vehicle on the basis of the information supplied by the manufacturer under § 600.006(b). The criteria to be met are:

(1) A fuel economy data vehicle may have accumulated not more than 10,000 miles. A vehicle will be considered to have met this requirement if the engine

and drivetrain have accumulated 10,000 or fewer miles. The components installed for a fuel economy test are not required to be the ones with which the mileage was accumulated, e.g., axles, transmission types, and tire sizes may be changed. The Administrator will determine if vehicle/engine component changes are acceptable.

(2) A vehicle may be tested in different vehicle configurations by change of vehicle components, as specified in paragraph (b)(1) of this section, or by testing in different inertia weight classes. Also, a single vehicle may be tested under different test conditions, i.e., test weight and/or road load horsepower, to generate fuel economy data representing various situations within a vehicle configuration. For purposes of this part, data generated by a single vehicle tested in various test conditions will be treated as if the data were generated by the testing of multiple vehicles.

(3) The mileage on a fuel economy data vehicle must be, to the extent possible, accumulated according to 40 CFR 86.1831.

(4) Each fuel economy data vehicle must meet the same exhaust emission standards as certification vehicles of the respective engine-system combination during the test in which the city fuel economy test results are generated. The deterioration factors established for the respective engine-system combination per § 86.1841–01 as applicable will be used.

(5) The calibration information submitted under § 600.006(b) must be representative of the vehicle configuration for which the fuel economy data were submitted.

(6) Any vehicle tested for fuel economy purposes must be representative of a vehicle which the manufacturer intends to produce under the provisions of a certificate of conformity.

(7) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4), or (e)(2) (when applicable) only the following requirements must be met:

(i) For vehicles imported under § 85.1509, a highway fuel economy value must be generated contemporaneously with the emission tests used for purposes of demonstrating compliance with § 85.1509. No modifications or adjustments should be made to the vehicles between the highway fuel economy, FTP, US06, SC03 and Cold temperature FTP tests.

(ii) For vehicles imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) with over 10,000 miles, the equation in § 600.006–86(g)(1) shall be used as though only 10,000 miles had been accumulated.

(iii) Any required fuel economy testing must take place after any safety modifications are completed for each vehicle as required by regulations of the Department of Transportation.

(iv) Every vehicle imported under § 85.1509 or § 85.1511(b)(2), (b)(4), (c)(2), (c)(4) or (e)(2) (when applicable) shall be considered a separate type for the purposes of calculating a fuel economy label for a manufacturer's average fuel economy.

(c) If, based on review of the information submitted under § 600.006(b), the Administrator determines that a fuel economy data vehicle meets the requirements of this section, the fuel economy data vehicle will be judged to be acceptable and fuel economy data from that fuel economy data vehicle will be reviewed pursuant to § 600.008.

(d) If, based on the review of the information submitted under § 600.006(b), the Administrator determines that a fuel economy data vehicle does not meet the requirements of this section, the Administrator will reject that fuel economy data vehicle and inform the manufacturer of the rejection in writing.

(e) If, based on a review of the emission data for a fuel economy data vehicle, submitted under § 600.006(b), or emission data generated by a vehicle tested under § 600.008(e), the Administrator finds an indication of non-compliance with section 202 of the Clean Air Act, 42 U.S.C. 1857 et seq. of the regulation thereunder, he may take such investigative actions as are appropriate to determine to what extent emission non-compliance actually exists.

(1) The Administrator may, under the provisions of 40 CFR 86.079–37(a) or 40 CFR 86.1830–01 as applicable, request the manufacturer to submit production vehicles of the configuration(s) specified by the Administrator for testing to determine to what extent emission noncompliance of a production vehicle configuration or of a group of production vehicle configurations may actually exist.

(2) If the Administrator determines, as a result of his investigation, that substantial emission non-compliance is exhibited by a production vehicle configuration or group of production vehicle configurations, he may proceed with respect to the vehicle configuration(s) as provided under section 206(b)(2) or section 207(c)(1), as applicable of the Clean Air Act, 42 U.S.C. 1857 et seq.

(f) All vehicles used to generate fuel economy data, and for which emission standards apply, must be covered by a certificate of conformity under part 86 of this chapter before:

(1) The data may be used in the calculation of any approved general or specific label value, or

(2) The data will be used in any calculations under subpart F, except that vehicles imported under §§ 85.1509 and 85.1511 need not be covered by a certificate of conformity.

10. A new § 600.008–08 is added to read as follows:

§ 600.008–08 Review of fuel economy data, testing by the Administrator.

(a) *Testing by the Administrator.* (1) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate, for the purposes of conducting fuel economy tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. The tests to be performed may comprise the FTP, highway fuel economy test, US06, SC03, or Cold temperature FTP or any combination of those tests. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(2) *Retesting and official data determination.* For any vehicles selected for confirmatory testing under the provisions of paragraph (a)(1) of this section, the Administrator will follow this procedure:

(i) The manufacturer's data (or harmonically averaged data if more than one test was conducted) will be compared with the results of the Administrator's test.

(ii) If, in the Administrator's judgment, the comparison in paragraph (a)(2)(i) of this section indicates a disparity in the data, the Administrator will repeat the test or tests as applicable.

(A) The manufacturer's average test results and the results of the Administrator's first test will be compared with the results of the Administrator's second test as in paragraph (a)(2)(i) of this section.

(B) If, in the Administrator's judgment, both comparisons in paragraph (a)(2)(i)(A) of this section, indicate a disparity in the data, the Administrator will repeat the applicable test or tests until:

(*i*) In the Administrator's judgment no disparity in the data is indicated by

comparison of two tests by the Administrator or by comparison of the manufacturer's average test results and a test by the Administrator; or

(*ii*) Four tests of a single test type are conducted by the Administrator in which a disparity in the data is indicated when compared as in paragraph (a)(2)(ii) of this section.

(iii) If there is, in the Administrator's judgment, no disparity indicated by comparison of manufacturer's average test results with a test by the Administrator, the test values generated by the Administrator will be used to represent the vehicle.

(iv) If there is, in the Administrator's judgment, no disparity indicated by comparison of two tests by the Administrator, the harmonic averages of the fuel economy results from those tests will be used to represent the vehicle.

(v) If the situation in paragraph (a)(2)(ii)(B)(*ii*) of this section occurs, the Administrator will notify the manufacturer, in writing, that the Administrator rejects that fuel economy data vehicle.

(b) *Manufacturer-conducted confirmatory testing.* (1) If the Administrator determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the following conditions exist:

(i) The vehicle configuration has previously failed an emission standard;

(ii) The test exhibits high emission levels determined by exceeding a percentage of the standards specified by the Administrator for that model year;

(iii) The fuel economy value of the FTP or HFET test is higher than expected based on procedures approved by the Administrator;

(iv) The fuel economy for the FTP or HFET test is close to a Gas Guzzler Tax threshold value based on tolerances established by the Administrator; or

(v) The fuel economy value for the FTP or highway is a potential fuel economy leader for a class of vehicles based on cut points provided by the Administrator.

(2) If the Administrator selects the vehicle for confirmatory testing based on the manufacturer's original test results, the testing shall be conducted as ordered by the Administrator. In this case, the manufacturer-conducted confirmatory testing specified under paragraph (b)(1) of this section would not be required.

(3) The manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer-conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

(i) The manufacturer may, in lieu of conducting a retest, accept the lower of the original and confirmatory test fuel economy results for use in subpart C or F of this part.

(ii) The manufacturer shall conduct a second retest of the FTP or highway test if the fuel economy difference between the second confirmatory test and the original manufacturer test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator) and the fuel economy difference between the second confirmatory test and the first confirmatory test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator). The manufacturer may, in lieu of conducting a second retest, accept the lowest of the original test, the first confirmatory test, and the second confirmatory test fuel economy results for use in subpart C or F of this part.

(4) The Administrator may request the manufacturer to conduct a retest of the US06, SC03 or Cold Temperature FTP on the basis of fuel economy that is higher than expected as specified in criteria provided by the Administrator. Such retests shall not be required before the 2011 model year.

(c) *Review of fuel economy data.* (1) Fuel economy data must be judged reasonable and representative by the Administrator in order for the test results to be used for the purposes of subpart C or F of this part. In making this determination, the Administrator will, when possible, compare the results of a test vehicle to those of other similar test vehicles.

(2) If testing was conducted by the Administrator under the provisions of paragraph (a) of this section, the fuel economy data determined by the Administrator under paragraph (a) of this section, together with all other fuel economy data submitted for that vehicle under § 600.006(c) or (e) will be evaluated for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c)(1) of this section will be accepted for use in subpart C or F of this part.

(ii) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(3) If confirmatory testing was not conducted by the Administrator but confirmatory testing was conducted by the manufacturer under the provisions of paragraph (b) of this section, the fuel economy data determined by the Administrator under paragraph (b) of this section, will be evaluated for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c)(1) of this section will be accepted for use in subpart C or F of this part.

(ii) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(4) If no confirmatory testing was conducted by either the Administrator or the manufacturer under the provisions of paragraph (a) and (b) of this section, respectively, then the data submitted under the provisions of § 600.006(c) or (e) shall be accepted for use in subpart C or F of this part.

(i) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(ii) If more than one test was conducted, the harmonic average of the test results shall be accepted for use in subpart C or F of this part.

(d) If, based on a review of the fuel economy data generated by testing under paragraph (a) of this section, the Administrator determines that an unacceptable level of correlation exists between fuel economy data generated by a manufacturer and fuel economy data generated by the Administrator, he/she may reject all fuel economy data submitted by the manufacturer until the cause of the discrepancy is determined and the validity of the data is established by the manufacturer.

(e)(1) If, based on the results of an inspection conducted under § 600.005(b) or any other information, the Administrator has reason to believe that the manufacturer has not followed proper testing procedures or that the testing equipment is faulty or improperly calibrated, or if records do

not exist that will enable him to make a finding of proper testing, the Administrator may notify the manufacturer in writing of his finding and require the manufacturer to:

(i) Submit the test vehicle(s) upon which the data are based or additional test vehicle(s) at a place he may designate for the purpose of fuel economy testing.

(ii) Conduct such additional fuel economy testing as may be required to demonstrate that prior fuel economy test data are reasonable and representative.

(2) Previous acceptance by the Administrator of any fuel economy test data submitted by the manufacturer shall not limit the Administrator's right to require additional testing under paragraph (h)(1) of this section.

(3) If, based on tests required under paragraph (e)(1) of this section, the Administrator determines that any fuel economy data submitted by the manufacturer and used to calculate the manufacturer's fuel economy average was unrepresentative, the Administrator may recalculate the manufacturer's fuel economy average based on fuel economy data that he/she deems representative.

(4) A manufacturer may request a hearing as provided in § 600.009 if the Administrator decides to recalculate the manufacturer's average pursuant to determinations made relative to this section.

11. A new § 600.010–08 is added to read as follows:

§ 600.010–08 Vehicle test requirements and minimum data requirements.

(a) For each certification vehicle defined in this part, and for each vehicle tested according to the emission test procedures in 40 CFR part 86 for addition of a model after certification or approval of a running change (40 CFR 86.079–32, 86.079–33 and 86.082–34 or 40 CFR 86.1842–01 as applicable):

(1) The manufacturer shall generate FTP fuel economy data by testing according to the applicable procedures.

(2) The manufacturer shall generate highway fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Using an analytical technique, as described in § 600.006(e).

(3) The manufacturer shall generate US06 fuel economy data by testing according to the applicable procedures. Alternative fueled vehicles or dual fueled vehicles operating on alternative fuel may optionally generate this data using the alternative fuel.

(4) The manufacturer shall generate SC03 fuel economy data by testing according to the applicable procedures. Alternative fueled vehicles or dual fueled vehicles operating on alternative fuel may optionally generate this data using the alternative fuel.

(5) The manufacturer shall generate Cold temperature FTP fuel economy data by testing according to the applicable procedures. Alternative fueled vehicles or dual fueled vehicles operating on alternative fuel may optionally generate this data using the alternative fuel.

(6) The data generated in paragraphs (a)(1) through (5) of this section, shall be submitted to the Administrator in combination with other data for the vehicle required to be submitted in part 86.

(b) For each fuel economy data vehicle:

(1) The manufacturer shall generate city and FTP fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Use of an analytical technique as described in § 600.006(e), in addition to testing (e.g., city fuel economy data by testing, highway fuel economy data by analytical technique).

(2) The data generated shall be submitted to the Administrator according to the procedures in § 600.006.

(c) *Minimum data requirements for labeling.* (1) In order to establish fuel economy label values under § 600.306, the manufacturer shall use only test data accepted in accordance with § 600.008(b) and (f) and meeting the minimum coverage of:

(i) Data required for emission certification under 40 CFR 86.084–24, 86.079–32, 86.079–33, and 86.082–34 or 40 CFR 86.1828–01 and 86.1842–01 as applicable.

(ii)(A) FTP and HFET data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level, and

(B) If required under § 600.116–08, US06, SC03 and cold temperature FTP data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level.

(C) Optionally, the manufacturer may generate US06, SC03 and cold temperature FTP fuel economy data for the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level.

(iii) For additional model types established under § 600.208(a)(2) or 600.209(a)(2), FTP and HFET data, and if required under § 600.116–08, US06, SC03 and Cold temperature FTP data from each subconfiguration included within the model type.

(2) For the purpose of recalculating fuel economy label values as required under § 600.314(b), the manufacturer shall submit data required under § 600.507.

(d) *Minimum data requirements for the manufacturer's average fuel economy.* For the purpose of calculating the manufacturer's average fuel economy under § 600.510, the manufacturer shall submit data representing at least 90 percent of the manufacturer's actual model year production, by configuration, for each category identified for calculation under § 600.510(a).

12. A new § 600.011–08 is added to read as follows:

§ 600.011–08 Reference materials.

(a) *Incorporation by reference.* The documents in paragraph (b) of this section have been incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at USEPA, OAR, 1200 Pennsylvania Ave., NW., Washington, DC 20460, 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.*

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part.

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 600.011, in which the matter is referenced. Copies of these materials may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

Document number and name	40 CFR part 600 reference
ASTM E 29–67 (Reapproved 1973) Standard Recommended Practice for Indicating Which Places of Figures Are To Be Considered Significant in Specified Limiting Values..	600.002–08.
ASTM D 1298–85 (Reapproved 1990) Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.	600.113–08(f)(1)(i), (f)(2)(i)(A), (f)(2)(i)(B), (f)(2)(ii); 600.510–08(g)(1)(ii)(B), (g)(2)(ii)(B).
ASTM D 3343–90 Standard Test Method for Estimation of Hydrogen Content of Aviation Fuels	600.113–08(f)(1)(ii), (f)(2)(i), (f)(2)(ii).
ASTM D 3338–92 Standard Test Method for Estimation of Net Heat of Combustion of Aviation Fuels.	600.113–08(f)(1)(iii).
ASTM D 240–92 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.	600.113–08(f)(2)(iii); 600.510–93(g)(1)(ii)(A), (g)(2)(ii)(A).
ASTM D975–04c "Standard Specification for Diesel Fuel Oils"	600.107–08(b), 600.113–08(c)(1).
ASTM D 1945–91 Standard Test Method for Analysis of Natural Gas By Gas Chromatography	600.113–08(f)(3), (k).

(2) [Reserved]

Subpart B—[Amended]

13. A new § 600.106–08 is added to read as follows:

§ 600.106–08 Equipment requirements.

The requirements for test equipment to be used for all fuel economy testing are given in Subparts B and C of part 86 of this chapter.

14. A new § 600.107–08 is added to read as follows:

§ 600.107–08 Fuel specifications.

(a) The test fuel specifications for gasoline, diesel, methanol, and methanol-petroleum fuel mixtures are given in § 86.113 of this chapter, except for cold temperature FTP fuel requirements for diesel vehicles, which are given in paragraph (b) of this section.

(b) Diesel test fuel used for cold temperature FTP testing must comprise a winter-grade diesel fuel as specified in ASTM D975–04c ''Standard Specification for Diesel Fuel Oils'' and that complies with 40 CFR part 80. Alternatively, EPA may approve the use of a different diesel fuel, provided that the level of kerosene added shall not exceed 20 percent.

15. A new § 600.109–08 is added to read as follows:

§ 600.109–08 EPA driving cycles.

(a) The FTP driving cycle is prescribed in § 86.115 of this chapter.

(b) The highway fuel economy driving cycle is specified in this paragraph.

(1) The Highway Fuel Economy Driving Schedule is set forth in appendix I to this part. The driving schedule is defined by a smooth trace drawn through the specified speed versus time relationships.

(2) The speed tolerance at any given time on the dynamometer driving schedule specified in appendix I, or as printed on a driver's aid chart approved by the Administrator, when conducted to meet the requirements of paragraph (b) of § 600.111 is defined by upper and lower limits. The upper limit is 2 mph higher than the highest point on trace within 1 second of the given time. The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time. Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for less than 2 seconds on any occasion. Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurrences.

(3) A graphic representation of the range of acceptable speed tolerances is found in § 86.115 (c) of this chapter.

(4) The US06 driving cycle is set forth in Appendix I of part 86 of this chapter.

(5) The SC03 driving cycle is set forth in Appendix I of part 86 of this chapter.

16. A new § 600.110–08 is added to read as follows:

§ 600.110–08 Equipment calibration.

The equipment used for fuel economy testing must be calibrated according to the provisions of § 86.116 and 86.216 of this chapter.

17. A new § 600.111–08 is added to read as follows:

§ 600.111–08 Test procedures.

(a) *FTP testing procedures.* The test procedures to be followed for conducting the FTP test are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable, except as provided for in paragraph (b)(5) of this section. (The evaporative loss portion of the test procedure may be omitted unless specifically required by the Administrator.)

(b) *Highway fuel economy testing procedures.* (1) The Highway Fuel Economy Dynamometer Procedure (HFET) consists of preconditioning highway driving sequence and a measured highway driving sequence.

(2) The HFET is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stop per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emission is collected continuously for subsequent analysis of hydrocarbons, carbon monoxide, carbon dioxide using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer. Methanol and formaldehyde samples are collected and individually analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(3) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart. The Administrator may authorize maintenance to correct component malfunction or failure.

(4) Transmission. The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(5) Road load power and test weight determination. Section 86.129 of this chapter applies for determination of road load power and test weight for highway fuel economy testing. The test weight for the testing of a certification vehicle will be that test weight specified by the Administrator under the provisions of part 86 of this chapter. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration.

(6) Vehicle preconditioning. The HFET is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter. When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (b)(6)(i) or (ii) of this section, as applicable.

(i) If the vehicle has experienced more than three hours of soak (68 °F–86 °F) since the completion of the Federal Emission Test Procedure, or has experienced periods of storage outdoors, or in environments where soak temperature is not controlled to 68 °F–86 °F, the vehicle must be preconditioned by operation on a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(ii) In unusual circumstances where additional preconditioning is desired by the manufacturer, the provisions of § 86.132(a)(3) of this chapter apply.

(7) Highway fuel economy dynamometer procedure. (1) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109(b)) separated by 15 seconds of idle. The first cycle of the Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(8) The provisions of paragraphs (b), (c), (e), (f), (g) and (h) of § 86.135 Dynamometer procedure of this chapter, apply for highway fuel economy testing.

(9) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide. Methanol and formaldehyde samples (exhaust and dilution air) are collected and analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(10) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(11) *Engine starting and restarting.* (i) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures.

(ii) False starts and stalls during the preconditioning cycle must be treated as in 40 CFR 86.136(d) and (e). If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to 40 CFR 86.1834–01 as applicable, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(12) *Dynamometer test run.* The following steps must be taken for each test:

(i) Place the drive wheels of the vehicle on the dynamometer. The vehicle may be driven onto the dynamometer.

(ii) Open the vehicle engine compartment cover and position the cooling fan(s) required. Manufacturers may request the use of additional cooling fans for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation.

(iii) Preparation of the CVS must be performed before the measurement highway driving cycle.

(iv) *Equipment preparation.* The provisions of § 86.137(b)(3) through (6) of this chapter apply for highway fuel economy test except that only one exhaust sample collection bag and one dilution air sample collection bag need be connected to the sample collection systems.

(v) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109(b).

(vi) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test.

(vii) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109(b) while sampling the exhaust gas.

(viii) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

(ix) For methanol dual fuel automobiles, the procedures of § 600.111(a) and (b) shall be performed for each of the required test fuels:

(A) Gasoline or diesel fuel as specified in § 600.107(a) and (b); and

(B) Methanol fuel as specified in § 600.107(c) and (d); and

(C) [Reserved.]

(D) In lieu of testing using the mixture containing 50% gasoline or diesel and 50% methanol by volume, the manufacturer must provide a written statement attesting that the equal or superior energy efficiency is attained while using the 50% gasoline or diesel and 50% methanol mixture compared to using gasoline.

(c) *US06 testing procedures.* The test procedure to be followed for conducting the US06 test are prescribed in §§ 86.158 through 86.159 of this chapter, as applicable.

(d) *SC03 testing procedures.* The test procedures to be followed for conducting the SC03 test are prescribed in §§ 86.158 and 86.160 through 164 of this chapter, as applicable.

(e) *Cold temperature FTP procedures.* The test procedures to be followed for conducting the cold temperature FTP test are prescribed in §§ 86.227 through 86.240 of this chapter, as applicable.

18. A new § 600.112–08 is added to read as follows:

§ 600.112–08 Exhaust sample analysis.

The exhaust sample analysis must be performed according to § 86.140, or § 86.240 of this chapter, as applicable.

19. A new § 600.113–08 is added to read as follows:

§ 600.113–08 Fuel economy calculations for FTP, HFET, US06, SC03 and Cold Temperature FTP tests.

The Administrator will use the calculation procedure set forth in this paragraph for all official EPA testing of vehicles fueled with gasoline, diesel, methanol or natural gas fuel. The calculations of the weighted fuel economy values require input of the weighted grams/mile values for total hydrocarbons (HC), carbon monoxide (CO), and carbon dioxide (CO_2); and, additionally for methanol-fueled automobiles, methanol (CH_3 OH) and formaldehyde (HCHO); and additionally for natural gas-fueled vehicles non-methane hydrocarbons (NMHC) and methane (CH_4) for the FTP, HFET, US06, SC03 and Cold temperature FTP tests. Additionally, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The FTP, HFET, US06, SC03 and cold temperature FTP fuel economy values shall be calculated as specified in this section. An example appears in appendix II to this part.

(a) Calculate the FTP fuel economy.

(1) Calculate the weighted grams/mile values for the FTP test for HC, CO and CO_2; and, additionally for methanol-fueled automobiles, CH_3 OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in § 86.144 of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(2) Calculate separately the grams/mile values for the cold transient phase, stabilized phase and hot transient phase of the FTP test. For vehicles with more than one source of propulsion energy, one of which is a rechargeable energy storage system, or vehicles with special features that the Administrator determines may have a reachargeable energy source, whose charge can vary during the test, calculate separately the grams/mile values for the cold transient phase, stabilized phase, hot transient phase and hot stabilized phase of the FTP test.

(b)(1) Calculate the mass values for the highway fuel economy test for HC, CO and CO_2, and where applicable CH_3 OH, HCHO, NMHC and CH_4 as specified in § 86.144(b) of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO and CO_2, and where applicable CH_3 OH, HCHO, NMHC and CH_4 by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual distance traveled, measured in miles, as specified in § 86.135(h) of this chapter.

(c) Calculate the cold temperature FTP fuel economy.

(1) Calculate the weighted grams/mile values for the cold temperature FTP test for HC, CO and CO_2; and, additionally for methanol-fueled automobiles, CH_3 OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in § 86.244 of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(2) Calculate separately the grams/mile values for the cold transient phase, stabilized phase and hot transient phase of the cold temperature FTP test in § 40 CFR 86.244. For vehicles with more than one source of propulsion energy, one of which is a rechargeable energy storage system, or vehicles with special features that the Administrator determines may have a reachargeable energy source, whose charge can vary during the test, calculate separately the grams/mile values for the cold transient phase, stabilized phase, hot transient phase and hot stabilized phase of the cold temperature FTP test.

(3) Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(d) Calculate separately the first and second phase grams/mile values for the US06 test for HC, CO and CO_2; and additionally for methanol-fueled automobiles, CH_3 OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in 86.144 of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(e) Calculate the grams/mile values for the SC03 test for HC, CO and CO_2; and additionally for methanol-fueled automobiles, CH_3 OH and HCHO; and additionally for natural gas-fueled automobiles NMHC and CH_4 as specified in 86.144 of this chapter. Measure and record the test fuel's properties as specified in paragraph (f) of this section.

(f)(1) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine the following fuel properties:

(i) Specific gravity per ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(ii) Carbon weight fraction per ASTM D 3343 (Incorporated by reference as specified in § 600.011–93).

(iii) Net heating value (Btu/lb) per ASTM D 3338 (Incorporated by reference as specified in § 600.011–93).

(2) Methanol test fuel shall be analyzed to determine the following fuel properties:

(i) Specific gravity using either:

(A) ASTM D 1298 (incorporated by reference as specified in § 600.011–93) for the blend; or

(B) ASTM D 1298 (incorporated by reference as specified in § 600.011–93) for the gasoline fuel component and also for the methanol fuel component and combining as follows:

$SG=SG_g$ x volume fraction gasoline+SG_m x volume fraction methanol.

(ii)(A) Carbon weight fraction using the following equation:

$CWF=CWF_g \times MF_g+0.375 \times MF_m$

Where:

CWF_g=Carbon weight fraction of gasoline portion of blend per ASTM D 3343 (incorporated by reference as specified in § 600.011–93).

MF_g=Mass fraction gasoline=$(GxSG_g)/(GxSG_g+MxSG_m)$

MF_m=Mass fraction methanol=$(MxSG_m)/(GxSG_g+MxSG_m)$

Where:

G=Volume fraction gasoline

M=Volume fraction methanol

SG_g=Specific gravity of gasoline as measured by ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

SG_m=Specific gravity of methanol as measured by ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(B) Upon the approval of the Administrator, other procedures to measure the carbon weight fraction of the fuel blend may be used if the manufacturer can show that the procedures are superior to or equally as accurate as those specified in this paragraph (f)(2)(ii).

(iii) Net heating value (BTU/lb) per ASTM D 240 (Incorporated by reference as specified in § 600.011–93).

(3) Natural gas test fuel shall be analyzed to determine the following fuel properties:

(i) Fuel composition per ASTM D 1945–91, Standard Test Method for Analysis of Natural Gas By Gas Chromatography. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at U.S. EPA Headquarters Library, EPA West Building, Constitution Avenue and 14th Street, NW., Room 3340, 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.*

(ii) Specific gravity (based on fuel composition per ASTM D 1945).

(iii) Carbon weight fraction based on the carbon contained only in the HC constituents of the fuel=weight of carbon in HC constituents divided by the total weight of fuel.

(iv) Carbon weight fraction of fuel=total weight of carbon in the fuel

(i.e., includes carbon contained in HC and in CO_2 divided by total weight of fuel.

(g) Calculate separate FTP, highway, US06, SC03 and Cold temperature FTP fuel economy from the grams/mile values for total HC, CO, CO_2 and, where applicable, CH_3, OH, HCHO, NMHC and CH_4 and, the test fuel's specific gravity, carbon weight fraction, net heating value, and additionally for natural gas, the test fuel's composition. The emission values (obtained per paragraph (a) through (e) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with 40 CFR 86.084–26(a)(6)(iii) or 40 CFR 86.1837–01 as applicable. The CO_2 values (obtained per this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (f) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (f) of this section) shall be recorded to the nearest whole Btu/lb.

(h)(1) For gasoline-fueled automobiles, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg=(5174\times10^4\times C\times CWF\times SG) / [((CWF\times HC) + (0.429\times CO) + (0.273\times CO_2)) \times ((0.6\times SG\times NHV)+5471)]$$

Where:

HC=Grams/mile HC as obtained in paragraph (g) of this section.

CO=Grams/mile CO as obtained in paragraph (g) of this section.

CO_2=Grams/mile CO_2 as obtained in paragraph (g) of this section.

CWF=Carbon weight fraction of test fuel as obtained in paragraph (g) of this section.

NHV=Net heating value by mass of test fuel as obtained in paragraph (g) of this section.

SG=Specific gravity of test fuel as obtained in paragraph (g) of this section.

(2) Round the calculated result to the nearest 0.1 miles per gallon.

(i)(1) For diesel-fueled automobiles, calculate the fuel economy in miles per gallon of diesel fuel by dividing 2778 by the sum of three terms:

(i) 0.866 multiplied by HC (in grams/miles as obtained in paragraph (g) of this section);

(ii) 0.429 multiplied by CO (in grams/mile as obtained in paragraph (g) of this section); and

(iii) 0.273 multiplied by CO_2 (in grams/mile as obtained in paragraph (g) of this section).

(2) Round the quotient to the nearest 0.1 mile per gallon.

(j) For methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg=(CWF\times SG\times 3781.8) / ((CWF_{exHC}\times HC) + (0.429\times CO) + (0.273\times CO_2) + (0.375\times CH_3OH) + (0.400\times HCHO))$$

Where:

CWF=Carbon weight fraction of the fuel as determined in paragraph (f)(2)(ii) of this section.

SG=Specific gravity of the fuel as determined in paragraph (f)(2)(i) of this section.

CWF_{exHC}=Carbon weight fraction of exhaust hydrocarbons= CWF_g as determined in (c)(2)(ii) of this section (for M100 fuel, CWF_{exHC}=0.866).

HC=Grams/mile HC as obtained in paragraph (g) of this section.

CO=Grams/mile CO as obtained in paragraph (g) of this section.

CO_2=Grams/mile CO_2 as obtained in paragraph (g) of this section.

CH_3OH=Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.

HCHO=Grams/mile HCHO (formaldehyde) as obtained in paragraph (g) of this section.

(k) For automobiles fueled with natural gas, the fuel economy in miles per gallon of natural gas is to be calculated using the following equation:

$$mpg_e = \frac{CWF_{HC/NG} D_{NG} 121.5}{(0.749)CH_4 + (CWF_{NMHC}) + (0.429)CO + (0.273)(CO_2 - CO_{2\,NG})}$$

Where:

mpg_e=miles per equivalent gallon of natural gas.

$CWF_{HC/NG}$=carbon weight fraction based on the hydrocarbon constituents in the natural gas fuel as obtained in paragraph (g) of this section.

D_{NG}=density of the natural gas fuel [grams/ft^3 at 68 °F (20° C) and 760 mm Hg (101.3 kPa)] pressure as obtained in paragraph (g) of this section.

CH_4, NMHC, CO, and CO_2=weighted mass exhaust emissions [grams/mile] for methane, non-methane HC, carbon monoxide, and carbon dioxide as calculated in § 600.113.

CWF_{NMHC}=carbon weight fraction of the non-methane HC constituents in the fuel as determined from the speciated fuel composition per paragraph (f)(3) of this section.

CO_{2NG}=grams of carbon dioxide in the natural gas fuel consumed per mile of travel.

$CO_{2NG}=FC_{NG}\ D_{NG}\ WF_{CO2}$

where:

FC_{NG}=cubic feet of natural gas fuel consumed per mile

$$= \frac{(0.749)CH_4 + (CWF_{NMHC})NMHC + (0.429)CO + (0.273))CO_2)}{CWF_{NG} D_{NG}}$$

where:

CWF_{NG}=the carbon weight fraction of the natural gas fuel as calculated in paragraph (f) of this section.

WF_{CO2}=weight fraction carbon dioxide of the natural gas fuel calculated using the mole fractions and molecular weights of the natural gas fuel constituents per ASTM D 1945.

20. A new § 600.114–08 is added to read as follows:

§ 600.114–08 Vehicle-specific 5-cycle fuel economy calculations.

This section applies to data used for fuel economy labeling under subpart D of this part.

(a) For each vehicle tested under sec. 600.010–08(c)(i) and (ii), determine the 5-cycle city fuel economy using the following equation:

$$\text{City FE} = 0.89 \times \frac{1}{(\text{Start FC} + \text{Running FC})}, \text{ where}$$

$$\text{StartFC (gallons per mile)} = 0.330 \times \left(\frac{(0.76 \times \text{StartFuel}_{75} + 0.24 \times \text{StartFuel}_{20})}{3.5} \right)$$

where,

$$\text{Start Fuel}_x \text{ for vehicles tested over a3} - \text{bag FTP} = \frac{3.59}{\text{Bag 1 FE}_x} - \frac{3.59}{\text{Bag 3 FE}_x}$$

or,

$$\text{Start Fuel}_x \text{ for vehicles tested over a4} - \text{bag FTP} = \frac{7.5}{\left(\frac{3.59}{\text{Bag 1 FE}_x} + \frac{3.91}{\text{Bag 2 FE}_x} \right)} - \frac{7.5}{\left(\frac{3.59}{\text{Bag 3 FE}_x} + \frac{3.91}{\text{Bag 4 FE}_x} \right)}$$

where

Bag y FE_x=the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75° or 20 °F.

$$\text{Running FC} = 0.70 \times \left[\frac{0.48}{\text{Bag } 2_{75} \text{ FE}} + \frac{0.41}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.11}{\text{US06 City FE}} \right] + 0.30 \times \left[\frac{0.5}{\text{Bag } 2_{20} \text{ FE}} + \frac{0.5}{\text{Bag } 2_{20} \text{ FE}} \right]$$
$$+ 0.133 \times \frac{21.5}{19.9} \times \left[\frac{1}{\text{SC03 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 2_{75} \text{ FE}} \right) \right]$$

where:

US06 City FE = fuel economy in miles per gallon over the ''city'' portion of the US06 test,

HFET FE = fuel economy in miles per gallon over the HFET test,

SC03 FE = fuel economy in miles per gallon over the SC03 test.

(b) For each vehicle tested under sec. 600.010–08(a) and (c)(1)(ii)(B), determine the 5-cycle highway fuel economy using the following equation:

$$\text{Highway FE} = 0.89 \times \frac{1}{\text{Start FC} + \text{Running FC}}, \text{ where}$$

$$\text{StartFC (gallons per mile)} = 0.330 \times \left(\frac{(0.76 \times \text{StartFuel}_{75} + 0.24 \times \text{StartFuel}_{20})}{60} \right), \text{ where}$$

$$\text{Start Fuel}_x \text{ for vehicles tested over a3} - \text{bag FTP} = \frac{3.59}{\text{Bag 1 FE}_x} - \frac{3.59}{\text{Bag 3 FE}_x}, \text{ or}$$

$$\text{Start Fuel}_x \text{ for vehicles tested over a4} - \text{bag FTP} =$$
$$\frac{7.5}{\left(\frac{3.59}{\text{Bag 1 FE}_x} + \frac{3.91}{\text{Bag 2 FE}_x} \right)} - \frac{7.5}{\left(\frac{3.59}{\text{Bag 3 FE}_x} + \frac{3.91}{\text{Bag 4 FE}_x} \right)}, \text{ where}$$

Bag y FE_x=the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75° or 20 °F.

$$\text{Running FC} = (1.012) \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}} \right] + 0.133 \times 0.377 \times \left[\frac{1}{\text{SC06 FE}} - \left(\frac{0.61}{\text{Bag } 3_{75} \text{ FE}} + \frac{0.39}{\text{Bag } 2_{75} \text{ FE}} \right) \right], \text{ where}$$

US06 Highway FE = fuel economy in mile per gallon over the highway portion of the US06 test,
HFET FE = fuel economy in mile per gallon over the HFET test,
SC03 FE = fuel economy in mile per gallon over the SC03 test.

21. A new § 600.115–08 is added to read as follows:

§ 600.115–08 Calculations for derived 5-cycle fuel economy.

This section applies to data used for fuel economy labeling under subpart D of this part.

(a) For each vehicle tested under 600.010 (a) and (b), determine the derived 5-cycle city fuel economy using the equation in this paragraph (a) and coefficients determined by the Administrator. Paragraph (c) of this section provides coefficients applicable to 2008 model year vehicles. In the case of dual fuel vehicles, determine separate fuel economy values for each fuel type. To determine the intercept and slope coefficients, the Administrator will compile the 5-cycle data collected under § 600.010–08(a) for three or more model years prior to the model year for which the coefficients are applicable. The Administrator will perform a least squares regression in which the vehicle-specific 5-cycle city fuel consumption (gallons per mile) is the dependent variable and the FTP fuel consumption (gallons per mile) is the independent variable. The resulting equation will define the slope and intercept coefficients. The Administrator will provide the coefficients to manufacturers by guidance letter issued no later than January 1 of the calendar year prior to the model year to which the coefficients are first applicable.

The equation is:

$$\text{Derived 5-cycle City Fuel Economy} = \frac{1}{\left(\{\text{City Intercept}\} + \frac{\{\text{City Slope}\}}{\text{FTP FE}} \right)}$$

, where:
City Intercept = Intercept determined by the Administrator
City Slope = Slope determined by the Administrator
FTP FE = the city fuel economy determined under sec. 600.113–08(a), rounded to the nearest tenth.

(b) For each vehicle tested under § 600.010 (a) and (b), determine the derived 5-cycle highway fuel economy using the equation in this paragraph (b) and coefficients determined by the Administrator. Paragraph (c) of this section provides coefficients applicable to 2008 model year vehicles. In the case of dual fuel vehicles, determine separate fuel economy values for each fuel type. To determine the intercept and slope coefficients, the Administrator will compile the 5-cycle data collected under § 600.010–08(a) for three or more model years prior to the model year for which the coefficients are applicable. The Administrator will perform a least squares regression in which the vehicle-specific 5-cycle highway fuel consumption (gallons per mile) is the dependent variable and the HFET fuel consumption (gallons per mile) is the independent variable. The resulting equation will define the slope and intercept coefficients. The Administrator will provide the coefficients for a given model year by guidance letter issued no later than January 1 of the calendar year prior to the model year to which the coefficients are first applicable.

The equation is:

$$\text{Derived 5-cycle Highway Fuel Economy} = \frac{1}{\left(\{\text{Highway Intercept}\} + \frac{\{\text{Highway Slope}\}}{\text{FTP FE}} \right)}$$

where:
Highway Intercept = Intercept determined by the Administrator based on historic 5-cycle highway fuel economy data
Highway Slope = Slope determined by the Administrator based on historic 5-cycle highway fuel economy data
HFET FE = the highway fuel economy determined under § 600.113–08(b), rounded to the nearest tenth.

(c) For 2008 and later model year vehicles, unless superseded by written guidance from the Administrator, the following values shall be used in the equations in paragraphs (a) and (b) of this section:

City Intercept = 0.002549
City Slope = 1.2259
Highway Intercept = 0.000308
Highway Slope = 1.4030

22. A new § 600.116–08 is added to read as follows:

§ 600.116–08 Criteria for additional US06, SC03 and cold temperature FTP testing.

This section applies to 2011 and later model year vehicles. This section defines which 2011 and later model year vehicles must use the vehicle-

specific 5-cycle fuel economy method specified in § 600.114–08.

(a) *City fuel economy testing.* (1) For each vehicle tested under § 600.010–08(a) [cert vehicles], the 5-cycle city fuel economy for that vehicle determined according to the provisions of § 600.114–08(b) and rounded to the nearest one tenth of a mile per gallon shall be compared to the following value calculated for that vehicle:

(i) The Derived 5-Cycle City Fuel Economy calculated under § 600.115–08(a) multiplied by 0.96 and rounded to the nearest one tenth of a mile per gallon.

(ii) [Reserved]

(2) If the 5-cycle city fuel economy determined in § 600.010–08(a) is less than the value determined in paragraph (a)(1)(i) of this section, then the manufacturer must conduct additional fuel economy testing according to the provisions of paragraph (a)(3) of this section.

(3) For vehicles meeting the criteria in paragraph (a)(2) of this section, the manufacturer shall identify all model types that are represented by the certification test group of the emission data vehicle tested under § 600.010–08(a). For each of these model types, the manufacturer shall:

(i) Perform US06, SC03, and cold temperature FTP tests in addition to the FTP and HFET tests;

(ii) Determine the 5-cycle city fuel economy for each model type according to the provisions of § 600.114–08;

(iii) Determine the 5-cycle highway fuel economy for each model type according to the provisions of § 600.114–08;

(b) *Highway fuel economy testing.* (1) For each vehicle tested under § 600.010–08(a) [cert vehicles], the 5-cycle highway fuel economy for that vehicle determined according to the provisions of § 600.114–08(c) and rounded to the nearest one tenth of a mile per gallon shall be compared to the following value calculated for that vehicle:

(i) The Derived 5-Cycle Highway Fuel Economy calculated under § 600.115–08(b) multiplied by 0.95 and rounded to the nearest one tenth of a mile per gallon.

(ii) [Reserved]

(2) If the 5-cycle highway fuel economy determined in § 600.010–08(a) is less than the value determined in paragraph (b)(1)(i) of this section, then the manufacturer must conduct additional fuel economy testing according to the provisions of paragraph (b)(3) of this section.

(3) For vehicles meeting the criteria in paragraphs (a)(2) and (b)(2) of this section, the manufacturer shall identify all model types that are represented by the certification test group of the emission data vehicle tested under § 600.010–08(a). For each of these model types, the manufacturer shall:

(i) Perform US06, SC03, and cold temperature FTP tests in addition to the FTP and HFET tests;

(ii) Determine the 5-cycle city fuel economy for each model type according to the provisions of § 600.114–08;

(iii) Determine the 5-cycle highway fuel economy for each model type according to the provisions of § 600.114–08;

(4) For vehicles meeting the criteria in paragraph (b)(2) of this section, but not meeting the criteria in paragraph (a)(2) of this section, the manufacturer shall identify all model types that are represented by the certification test group of the emission data vehicle tested under § 600.010–08(a). For each of these model types, the manufacturer shall:

(i) Perform a US06 test in addition to the FTP and HFET tests;

(ii) Determine the 5-cycle highway fuel economy according to the following formula:

$$\text{Highway FE} = 0.89 \times \frac{1}{\text{Start FC} + \text{Running FC}}, \text{ where}$$

$$\text{StartFC} = 0.33 \times \frac{\left(0.004774 + 1.1377 \times \text{StartFuel}_{75}\right)}{60.0}, \text{ where}$$

$$\text{StartFuel}_{75} = 3.59 \times \left(\frac{1}{\text{Bag 1 FE}_{75}} - \frac{1}{\text{Bag 3 FE}_{75}}\right), \text{ and}$$

where,

Bag y FE_{75} = the fuel economy in miles per gallon of fuel during the specified bag of the FTP test conducted at an ambient temperature of 75°.

$$\text{Running FC} = \left[1.0 + \left(0.04 \times 0.3\right)\right] \times \left[\frac{0.79}{\text{US06 Highway FE}} + \frac{0.21}{\text{HFET FE}}\right] + \left[0.377 \times 0.133 \times \left(0.004254 + \frac{0.15931}{\text{US06 FE}}\right)\right]$$

where,

US06 Highway FE = fuel economy in miles per gallon over the highway portion of the US06 test, and

HFET FE = fuel economy in miles per gallon over the HFET test.

Subpart C—[Amended]

23. A new § 600.201–08 is added to read as follows:

§ 600.201–08 General applicability.

The provisions of this subpart are applicable to 2008 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

* * * * *

24. A new § 600.206–08 is added to read as follows:

§ 600.206–08 Calculation and use of FTP-based and HFET-based fuel economy values for vehicle configurations.

(a) Fuel economy values determined for each vehicle under § 600.113(a) and (b) and as approved in § 600.008–08(c), are used to determine FTP-based city, HFET-based highway, and combined FTP/Highway-based fuel economy values for each vehicle configuration for which data are available.

(1) If only one set of FTP-based city and HFET-based highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one FTP-based city or highway fuel economy value is accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.208(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine FTP-based city and HFET-based highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All FTP-based city fuel economy values and all HFET-based highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the FTP-based city and HFET-based highway fuel economy values for the vehicle configuration.

(3) For the purpose of determining average fuel economy under § 600.510–93, the combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the FTP-based city and HFET-based highway fuel economy values, as determined in § 600.206(a)(1) or (2), weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in Appendix II to this part.

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) through (3) of this section shall be used to calculate two separate sets of FTP-based city, HFET-based highway, and combined fuel economy values for each configuration.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will compose the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

25. A new § 600.207–08 is added to read as follows:

§ 600.207–08 Calculation and use of 5-cycle-based fuel economy values for vehicle configurations.

(a) Fuel economy values determined for each vehicle, under 600.114–08, 600.115–08, or 600.116–08 as applicable, and as approved in § 600.008–08(c), are used to determine 5-cycle city, highway, and combined fuel economy values for each vehicle configuration for which data are available.

(1) If only one set of 5-cycle city and highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one 5-cycle city or highway fuel economy value is accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.209(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine 5-cycle city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All 5-cycle city fuel economy values and all 5-cycle highway fuel economy values calculated in paragraph (b)(2)(ii) of this section are (separately for FTP, highway, US06, SC03 and Cold temperature FTP) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the 5-cycle city and highway fuel economy values for the vehicle configuration.

(3) The 5-cycle combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the 5-cycle city and highway fuel economy values, as determined in § 600.207(a)(1) or (2), weighted 0.43 and 0.57 respectively, and rounded to the nearest 0.0001 mile per gallon. An example of this calculation appears in Appendix II to this part.

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) through (3) of this section shall be used to calculate two separate sets of 5-cycle city, highway, and combined fuel economy values for each configuration.

(i) Calculate the 5-cycle city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii)(A) Calculate the 5-cycle city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel, if testing was performed; or

(B) Calculate the derived 5-cycle city, highway, and combined fuel economy according to § 600.115–08, expressed in terms of gasoline equivalent.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will compose the petroleum-based 5-cycle fuel economy for that configuration.

(c) If more than one equivalent petroleum-based 5-cycle fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

26. A new § 600.208–08 is added to read as follows:

§ 600.208–08 Calculation of FTP-based and HFET-based fuel economy values for a model type.

(a) Fuel economy values for a base level are calculated from vehicle configuration fuel economy values as determined in § 600.206–08(a), (b), or (c) as applicable, for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for

each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label;

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the original base level fuel economy values); and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010–08(c)(1)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The requirements of this paragraph (a)(3) may be satisfied by providing an amended application for certification, as described in 40 CFR 86.084–21 or 40 CFR 86.1844–01 as applicable.

(4) Vehicle configuration fuel economy values, as determined in § 600.206–08(a), (b) or (c), as applicable, are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.208–08(a) will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each base level.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type. Separate model type calculations will be done based on the vehicle configuration fuel economy values as determined in § 600.206–08(a), (b) or (c), as applicable.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3) The FTP-based city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sales fraction of a base level; by

(ii) The FTP-based city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (b)(1) through (4) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each model type.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

27. A new § 600.209–08 is added to read as follows:

§ 600.209–08 Calculation of 5-cycle fuel economy values for a model type.

(a) 5-cycle fuel economy values for a base level are calculated from vehicle configuration 5-cycle fuel economy values as determined in § 600.207–08 for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label;

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not

included in the calculation of the original base level fuel economy values); and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010–08(c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The requirements of this paragraph (a)(3) may be satisfied by providing an amended application for certification, as described in 40 CFR 86.084–21 or 40 CFR 86.1844–01 as applicable.

(4) 5-cycle vehicle configuration fuel economy values, as determined in § 600.207–08 are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.209–08(a) will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each base level.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type. Separate model type calculations will be done based on the vehicle configuration fuel economy values as determined in § 600.207–08, as applicable.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3) The 5-cycle city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sales fraction of a base level; by

(ii) The 5-cycle city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (b)(1) through (4) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each model type.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

28. A new § 600.210–08 is added to read as follows:

§ 600.210–08 Calculation of 5-cycle-based fuel economy values for labeling.

(a) *General Labels.* The city and highway model type fuel economy determined in § 600.209–08 (b), rounded to the nearest mpg, comprise the fuel economy values for general fuel economy labels. If the manufacturer determines that the resulting label values are not representative of the fuel economy for that model type, they may voluntarily lower these values.

(b) *Specific Labels.* (1) The 5-cycle city model type fuel economy value determined in § 600.207–08(a), rounded to the nearest mpg, comprises the city fuel economy value for specific fuel economy labels. If the manufacturer determines that the resulting city label value is not representative of the fuel economy for that specific vehicle, they may voluntarily lower this value.

(2) The 5-cycle highway model type fuel economy value determined in § 600.207–08(a) rounded to the nearest mpg, comprises the highway fuel economy value for specific fuel economy labels. If the manufacturer determines that the resulting highway label value is not representative of the fuel economy for that specific vehicle, they may voluntarily lower this value.

(c) If the city value exceeds the highway value for a model type under (a) or (b) of this section, the city value will be set equal to the highway value. In cases where special vehicle design features may result in city values that exceed highway values, the manufacturer may request Administrator approval to waive this requirement. Such a request must be accompanied by on-road fuel economy data which demonstrates that the fuel economy during city-type driving is higher than fuel economy during highway-type driving.

(d) For the purposes of calculating the combined fuel economy for a model type, to be used in determining annual fuel costs under § 600.307–08, the manufacturer shall (except as provided for in paragraph (d)(2) of this section):

(1)(i) For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, harmonically average the unrounded city and highway values, determined in paragraphs (a)(1)(i) and (b)(1)(i), or (a)(2)(i) and (b)(2)(i) of this section weighted 0.43 and 0.57 respectively, and round to the nearest whole mpg. (An example of this calculation procedure appears in appendix II of this part); or

(ii) For alcohol dual fuel and natural gas dual fuel automobiles, harmonically average the unrounded city and highway values from the tests

performed using gasoline or diesel test fuel as determined in paragraphs (a)(1)(ii)(A) and (b)(1)(ii)(A), or (a)(2)(ii)(A) and (b)(2)(ii)(A) of this section.

(2) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the combined fuel economy will be set equal to the highway value, rounded to the nearest whole mpg, unless as otherwise approved by the Administrator under paragraph (c) of this section.

Subpart D—[Amended]

29. A new § 600.301–08 is added to read as follows:

§ 600.301–08 General applicability.

(a) The provisions of this subpart are applicable to 2008 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

* * * * *

30. A new § 600.306–08 is added to read as follows:

§ 600.306–08 Labeling requirements.

(a) Prior to being offered for sale, each manufacturer shall affix or cause to be affixed and each dealer shall maintain or cause to be maintained on each automobile:

(1) A general fuel economy label (initial, or updated as required in § 600.314) as described in § 600.307(c) or:

(2) A specific label, as described in § 600.307(d), for those automobiles manufactured or imported before the date that occurs 15 days after general labels have been determined by the manufacturer.

(i) If the manufacturer elects to use a specific label within a model type (as defined in § 600.002–08, he shall also affix specific labels on all automobiles within this model type, except on those automobiles manufactured or imported before the date that labels are required to bear range values as required by paragraph (b) of this section, or determined by the Administrator, or as permitted under § 600.310–08.

(ii) If a manufacturer elects to change from general to specific labels or vice versa within a model type, the manufacturer shall, within five calendar days, initiate or discontinue as applicable, the use of specific labels on all vehicles within a model type at all facilities where labels are affixed.

(3) For any vehicle for which a specific label is requested which has a combined FTP/HFET-based fuel economy value, as determined in § 600.206–08(a)(3), at or below the minimum tax-free value, the following statement must appear on the specific label:

''[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of the low fuel economy.'' (4)(i) At the time a general fuel economy value is determined for a model type, a manufacturer shall, except as provided in paragraph (a)(4)(ii) of this section, relabel, or cause to be relabeled, vehicles which:

(A) Have not been delivered to the ultimate purchaser, and

(B) Have a combined FTP/HFET-based model type fuel economy value (as determined in § 600.208–08(b) of 0.1 mpg or more below the lowest fuel economy value at which a Gas Guzzler Tax of $0 is to be assessed.

(ii) The manufacturer has the option of relabeling vehicles during the first five working days after the general label value is known.

(iii) For those vehicle model types which have been issued a specific label and are subsequently found to have tax liability, the manufacturer is responsible for the tax liability regardless of whether the vehicle has been sold or not or whether the vehicle has been relabeled or not.

(b) *FE range of comparable vehicles.* The manufacturer shall include the current range of fuel economy of comparable automobiles (as described in §§ 600.311 and 600.314) in the label of each vehicle manufactured or imported more than 15 calendar days after the current range is made available by the Administrator.

(1) Automobiles manufactured before a date 16 or more calendar days after the initial label range is made available under § 600.311–08(c) may be labeled without a range of fuel economy of comparable automobiles. In place of the range of fuel economy of comparable automobiles, the label must contain the statement ''Fuel economy for comparable vehicles not available at this time. See *www.fueleconomy.gov* for comparisons.''

(2) Automobiles manufactured more than 15 calendar days after the initial or updated label range is made available under § 600.311–08(c) or (d) will be labeled with the current range of fuel economy of comparable automobiles as approved for that label.

(c) The fuel economy label must be readily visible from the exterior of the automobile and remain affixed until the time the automobile is delivered to the ultimate consumer.

(1) It is preferable that the fuel economy label information be included with the Automobile Information Disclosure Act label, provided that the prominence and legibility of the fuel economy label is maintained. For this purpose, all fuel economy label information must be placed on a separate section in the label and may not be intermixed with the Automobile Information Disclosure Act label information, except for vehicle descriptions as noted in § 600.307–08(c).

(2) The fuel economy label must be located on a side window. If the window is not large enough to contain both the Automobile Information Disclosure Act label and the fuel economy label, the manufacturer shall have the fuel economy label affixed on another window and as close as possible to the Automobile Information Disclosure Act label.

(3) The manufacturer shall have the fuel economy label affixed in such a manner that appearance and legibility are maintained until after the vehicle is delivered to the ultimate consumer.

31. A new § 600.307–08 is added to read as follows:

§ 600.307–08 Fuel economy label format requirements.

[**Note:** Proposed rule offers 4 label formats. One will be selected based on comments received. Precise font sizes and locations are to be determined based on the final format chosen].

(a)(1) Fuel economy labels must be:

(i) Rectangular in shape with a minimum height of 4.5 inches (114 mm) and a minimum length of 7.0 inches (178 mm) as depicted in Appendix VIII.

(ii) Printed in a color which contrasts with the paper color.

(iii) The label shall have a contrasting border. The top border shall be at least [TBD] inches wide and the bottom border shall be at least [TBD] wide. The side borders shall be no more than [TBD] wide.

(2) The top [TBD] percent of the fuel economy label area shall contain only the following information and in the same format depicted in the label format in Appendix VIII:

(i) The titles ''CITY MPG'' and ''HIGHWAY MPG'', centered over the applicable fuel economy estimates, in bold caps [TBD] points in size,

(ii)(A) For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, the city and highway fuel economy estimates calculated in accordance with § 600.209(a) and (b),

(B) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the city and highway fuel economy estimates for operation on gasoline or diesel fuel as calculated in § 600.210–08(a) and (b),

(iii) The fuel pump logo,

(iv) The following phrase is centered, full justification, underneath the fuel pump logo, in bold print: ''Your actual mileage can vary significantly according to how you drive and maintain your vehicle and other factors.

(v) The statement: ''Expected range for most drivers:__ to __ mpg'', placed underneath both the city and highway estimates, centered to the estimate numbers. The range values for this statement are to be calculated in accordance with the following:

(A) The lower range values shall be determined by multiplying the city and highway estimates by 0.83, then rounding to the next lower integer value.

(B) The upper range values shall be determined by multiplying the city and highway estimates by 1.17 and rounding to the next higher integer value.

(vi) The top border shall contain a ''dropped out'' centered title ''EPA FUEL ECONOMY ESTIMATES'' in bold caps [TBD] points in size. At the far left of the top border, the official EPA logo shall appear and at the far right of the top border, the official DOE logo shall appear. The logos shall be [TBD] inches in diameter.

(vii)(A) For dedicated alcohol-fueled automobiles, the title A(insert appropriate fuel (example ''METHANOL ''(M85))'')''. The title shall be positioned [TBD] and shall be in upper case in a bold condensed type and no smaller than [TBD] points in size.

(B) For dedicated natural gas-fueled automobiles, the title ''NATURAL GAS*''. The title shall be positioned [TBD] and shall be in uppercase in a bold condensed type and no smaller than [TBD] points in size.

(C) For dedicated alcohol dual fuel automobiles and natural gas dual fuel automobiles, the title ''DUAL FUEL*''. The title shall be positioned [TBD] and shall be in upper case in a bold condensed type and no smaller than [TBD] points in size.

(viii)(A) For dedicated alcohol-fueled automobiles, the title ''(insert appropriate fuel (example ''M85''))'' centered above the title ''CITY MPG'' and above the title ''HIGHWAY MPG'' in bold caps [TBD] points in size.

(B) For dedicated natural gas-fueled automobile, the title AGASOLINE EQUIVALENT'' centered above the title ''CITY MPG'' and above the title ''HIGHWAY MPG'' in bold caps [TBD] points in size.

(C) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the title ''GASOLINE'' centered above the title ''CITY MPG'' and above the title ''HIGHWAY MPG'' in bold caps [TBD] in size.

(3) The bottom [TBD] percent of the label shall contain the following information: (i) The bottom border shall contain the following ''dropped out'' centered text in [TBD] font print: ''For more information see the FREE FUEL ECONOMY GUIDE available at dealers or on line at *www.fueleconomy.gov*''.

(ii) If the label is separate from the Automobile Information Disclosure Act label, the [vehicle/truck] description, as described in paragraph (c) or (d) of this section, when applicable.

(iii)(A) A statement: ''For comparison shopping, the range of fuel economy for all [VEHICLE CLASS]s is __ to __ mpg city and__ to __mpg highway.'' (The range values are those determined in accordance with § 600.311.) Or, when applicable, [Alternative: (A) A graphic representation of combined FE range as shown in Appendix IV. Format TBD.]

(B) A statement: ''A range of fuel economy values for other [VEHICLE CLASS]s is not available at this time.''

(iv) The statement: ''Estimated Annual Fuel Cost:'' followed by the appropriate value calculated in accordance with paragraph (f) or (g) of this section and the statement ''based on ____ miles at [the EPA-provided cost per gallon of the required fuel for that vehicle.'' The estimated annual fuel cost value for alcohol dual fuel automobiles and natural gas dual fuel vehicles to appear on the fuel economy label shall be that calculated based on operating the vehicle on gasoline or diesel fuel as determined in § 600.307(g) and (h) [check cites]. At the manufacturer's option, the label may also contain the estimated annual fuel cost value based on operating the vehicle on the alternative fuel.

(v)(A) The Gas Guzzler statement, when applicable (see paragraph (e) of this section), must be centered on a separate line between the bottom border and the Estimated Annual Fuel Cost statements. The words ''Gas Guzzler'' shall be highlighted.

(B) The type size shall be at least as large as the largest type size in the bottom [TBD] percent of the label.

(vi)(A) For dedicated alcohol-fueled, and natural gas-fueled automobiles, the statement: ''*This vehicle operates on [insert appropriate fuel(s)] only.'' shall appear [TBD]. The phrase shall be in lower case in a medium condensed type except for the fuels listed which shall be capitalized in a bold condensed type no smaller than [TBD] points in size.

(B) For dedicated natural gas-fueled automobiles, the statements: ''All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823.'' At the manufacturers option, the statement ''To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823.'' may be replaced by the statement ''The fuel economy in units of miles per (insert units used in retail) is estimated to be (insert city fuel economy value) in the city, and (insert highway fuel economy value) on the highway.''

(C) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the statement: ''This vehicle operates on [insert gasoline or diesel as appropriate] and [insert other fuel(s) as appropriate].'' shall appear above the bottom border. The phrase shall be in lower case in a medium condensed type except for the words ''gasoline'' or ''diesel'' (as appropriate) and the other fuels listed, which shall be capitalized in a bold condensed type no smaller than [TBD] points in size.

(vii) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the statement: ''All fuel economy values on this label pertain to [insert gasoline or diesel as appropriate] fuel usage. [insert other fuel(s) as appropriate] fuel(s) usage will yield different values. See the FREE FUEL ECONOMY GUIDE for information on [insert other fuel(s)].'' At the manufacturers option, the above statements may be replaced by the statement ''The fuel economy while using [insert appropriate fuel (example ''M85)] is estimated to be [insert city fuel economy value and appropriate units] in the city and [insert highway fuel economy value and appropriate units] on the highway. See the FREE FUEL ECONOMY GUIDE for other information on [insert appropriate fuel].''

(4) The maximum type size for the statements located in the lower [TBD] percent of the label shall not exceed [TBD] points in size.

(b) The city mpg number shall be displayed on the [TBD] and the highway mpg number displayed on the [TBD].

(1) Except for the digit ''one,'' each mpg digit shall measure at least [TBD] inches by [TBD inches ([TBD × TBD] mm) in width and height respectively.

(2) The digit ''one,'' shall measure at least [TBD] mm by [TBD] mm width and height respectively.

(3)(i) MPG digits not printed as a single character shall be made of a matrix of smaller characters. This matrix shall be at least four characters wide by five characters high (with the exception of three characters wide for the numerical character denoting ''one''.)

(ii) The small characters shall be made of successive overstrikes to form a reasonably dark and continuous line that approximates a single large character.

(4)(i) If manufacturer chooses to enlarge the label from that depicted in Appendix IV, the logo and the fuel economy label values, including the titles ''CITY MPG'' and ''HIGHWAY MPG'', must be increased in the same proportion.

(ii) The area bounded by the bottom of the fuel pump logo to the top of the border must continue to represent at least [TBD] percent of the available label area.

(c) *Vehicle description information for general and specific labels.* (1) Where the fuel economy label is physically incorporated with the Motor Vehicle Information and Cost Savings Act label, the applicable vehicle description, as set forth in this paragraph, does not have to be repeated if the information is readily found on this label.

(2) For fuel economy labels which are physically separate from the Motor Vehicle Information and Cost Savings Act label, the vehicle description on general labels will be as follows:

(i) Model year;

(ii) Vehicle car line;

(iii) Engine displacement, in cubic inches, cubic centimeters, or liters whichever is consistent with the customary description of that engine;

(iv) Number of engine cylinders or rotors;

(v) Additional engine description, if necessary to distinguish otherwise identical model types, as approved by the Administrator; and

(vi) Transmission class.

(3) For fuel economy labels which are physically separate from the Motor Vehicle Information and Cost Savings Act label, the vehicle description on specific labels will be as follows:

(i) The descriptions of paragraph (c) of this section, and

(ii) Inertia weight class;

(iii) Axle ratio; and

(iv) Other engine or vehicle parameters, if approved by the Administrator.

(d) [Reserved]

(e)(1) For fuel economy labels of passenger automobile model types requiring a tax statement under § 600.513, the phrase ''* * * Gas Guzzler Tax: $____ * * *''.

(2) The tax value required by this paragraph shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.208–08 and rounded to the nearest 0.1 mpg.

(f) *Estimated annual fuel cost—general labels.* The annual fuel cost estimate for operating an automobile included in a model type shall be computed by using values for the fuel cost per gallon of the required fuel as specified in the owner's manual and average annual mileage, predetermined by the Administrator, and the combined fuel economy determined in § 600.210(d).

(1) The annual fuel cost estimate for a model type is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon, where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar; by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The average, rounded to the nearest 0.0001 gallons per mile (natural gas must be expressed in units of gallons equivalent per mile where 100 SCF=0.823 equivalent gallons) of the combined fuel economy value determined in § 600.210(d) for a model type.

(2) The product computed in paragraph (f)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on general labels for the model type.

(g) Estimated annual fuel cost—specific labels. The annual fuel cost estimate for operating an automobile included in a vehicle configuration will be computed by using the values for the fuel cost per volume (gallon for liquid fuels, cubic feet for gaseous fuels) and average mileage and the fuel economy determined in paragraph (h)(1)(iii) of this section.

(1) The annual fuel cost estimate for vehicle configuration is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon, where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar; by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The inverse, rounded to the nearest 0.0001 gallons per mile (natural gas must be expressed in units of gallon equivalent per mile, where 100 SCF=0.823 equivalent gallons) of the fuel economy value determined in § 600.207–08(a)(2)(iii) for a vehicle configuration.

(2) The product computed in paragraph (g)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on specific labels for that vehicle configuration.

* * * * *

32. A new § 600.311–08 is added to read as follows:

§ 600.311–08 Range of fuel economy for comparable automobiles.

(a) The Administrator will determine the range of city and the range of highway fuel economy values for each class of comparable automobiles.

[Alternative proposal for graphic depiction of comparable fuel economy]

(a) The Administrator will determine the range of combined fuel economy values for each class of comparable automobiles. The range of combined fuel economy values within a class is the maximum and minimum combined fuel economy values for all general labels as determined in § 600.210–08(d).

(b) The range of city fuel economy values within a class is the maximum city and the minimum city fuel economy value for all general labels as determined in § 600.210–08(a) regardless of manufacturer. The range of highway values is determined in the same manner.

(c) The initial range will be made available on a date specified by the Administrator that closely coincides to the date of the general model introduction for the industry.

(d) The ranges of comparable fuel economy values for a class of automobiles will be updated periodically and will be derived from the latest available label values reported to the Administrator for that class of automobiles.

(e) If the Administrator determines that automobiles intended for sale in California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he/she will compute separate ranges of fuel economy values for each class of automobiles for California and for the other states.

(f) For high altitude vehicles determined under § 600.310, both general and specific labels will contain the range of comparable fuel economy computed in this section.

(g) The manufacturer shall include the appropriate range of fuel economy determined by the Administrator in paragraph (c) or (d) of this section, on each label affixed to an automobile within the class, except as provided in § 600.306(b)(1).

33. A new § 600.314–08 is added to read as follows:

§ 600.314–01 Updating label values, annual fuel cost, Gas Guzzler Tax, and range of fuel economies for comparable automobiles.

(a) The label values established in § 600.312 shall remain in effect for the model year unless updated in accordance with paragraph (b) of this section.

(b)(1) The manufacturer shall recalculate the model type fuel economy values for any model type containing base levels affected by running changes specified in § 600.507(a).

(2) For separate model types created in § 600.209–08(a)(2), the manufacturer shall recalculate the model type values for any additions or deletions of subconfigurations to the model type. Minimum data requirements specified in § 600.010(c) shall be met prior to recalculation.

(3) Label value recalculations shall be performed to read as follows:

(i) The manufacturer shall use updated total model year projected sales for label value recalculations.

(ii) All model year data approved by the Administrator at the time of the recalculation for that model type shall be included in the recalculation.

(iii) Using the additional data under paragraph (b) of this section, the manufacturer shall calculate new 5-cycle model type city and highway values in accordance with §§ 600.209–08 and 600.210–08 except that the values shall be rounded to the nearest 0.1 mpg.

(iv) The existing label values, calculated in accordance with §§ 600.209–08 and 600.210–08, shall be rounded to the nearest 0.1 mpg.

(4)(i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, the manufacturer shall affix labels with the recalculated 5-cycle model type values (rounded to whole mpg'') to all new vehicles of that model type beginning on the day of implementation of the running change.

(ii) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is higher than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, then the manufacturer has the option to use the recalculated values for labeling the entire model type beginning on the day of implementation of the running change.

(c) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (b) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax as needed).

(d) The Administrator shall periodically update the range of fuel economies of comparable automobiles based upon all label data supplied to the Administrator.

(e) The manufacturer may request permission from the Administrator to calculate and use label values based on test data from vehicles which have not completed the Administrator ordered confirmatory testing required under the provisions of § 600.008–08(c). If the Administrator approves such a calculation the following procedures shall be used to determine if relabeling is required after the confirmatory testing is completed.

(1) The Administrator-ordered confirmatory testing shall be completed as quickly as possible.

(2) Using the additional data under paragraph (e)(1) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207–08 and 600.210–08 except that the values shall be rounded to the nearest 0.1 mpg.

(3) The existing label values, calculated in accordance with §§ 600.209–08 and 600.210–08, shall be rounded to the nearest 0.1 mpg.

(4) *Relabeling.* (i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.5 mpg or more, the manufacturer shall affix labels with the recalculated 5-cycle model type values (rounded to whole mpg) to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(ii) If both the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.1 mpg or more and the recalculated gas guzzler tax rate determined under the provisions of § 600.513–91 is larger, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg) and gas guzzler tax statement and rates to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(5) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (e)(4) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax if required by Department of Treasury regulations).

34. A new § 600.315–08 is added to read as follows:

§ 600.315–08 Classes of comparable automobiles.

(a) The Secretary will classify automobiles as passenger automobiles or light trucks (nonpassenger automobiles) in accordance with 49 CFR part 523.

(1) The Administrator will classify passenger automobiles by car line into one of the following classes based on interior volume index or seating capacity except for those passenger automobiles which the Administrator determines are most appropriately placed in a different classification or classed as special purpose vehicles as provided in paragraph (a)(3) of this section.

(i) *Two seaters.* A car line shall be classed as ''Two Seater'' if the majority of the vehicles in that car line have no more than two designated seating positions as such term is defined in the regulations of the National Highway Traffic Safety Administration, Department of Transportation (DOT), 49 CFR 571.3.

(ii) *Minicompact cars.* Interior volume index less than 85 cubic feet.

(iii) *Subcompact cars.* Interior volume index greater than or equal to 85 cubic feet but less than 100 cubic feet.

(iv) *Compact cars.* Interior volume index greater than or equal to 100 cubic feet but less than 110 cubic feet.

(v) *Midsize cars.* Interior volume index greater than or equal to 110 cubic feet but less than 120 cubic feet.

(vi) *Large cars.* Interior volume index greater than or equal to 120 cubic feet.

(vii) *Small station wagons.* Station wagons with interior volume index less than 130 cubic feet.

(viii) *Midsize station wagons.* Station wagons with interior volume index greater than or equal to 130 cubic feet but less than 160 cubic feet.

(ix) *Large station wagons.* Station wagons with interior volume index greater than or equal to 160 cubic feet.

(2) The Administrator will classify nonpassenger automobiles into the following categories: Small pickup trucks, standard pickup trucks, vans, minivans, SUVS and special purpose vehicles. Pickup trucks will be separated by car line on the basis of gross vehicle weight rating (GVWR). For pickup truck car lines with more than one GVWR, the GVWR of the pickup truck car line is the arithmetic average of all distinct GVWR's less than or equal to 8,500 pounds available for that car line.

(i) *Small pickup trucks.* Pickup trucks with a GVWR less than 6000 pounds.

(ii) *Standard pickup trucks.* Pickup trucks with a GVWR of 6000 pounds up to and including 8,500 pounds.

(iii) *Vans.*

(iv) *Minivans.*

(v) *Sport utility vehicles.*

(3)(i) *Special purpose vehicles.* All automobiles with GVWR less than or equal to 8,500 pounds which possess special features and which the Administrator determines are more appropriately classified separately from typical automobiles or which do not meet the requirements of paragraphs (a)(1) and (2) of this section will be classified as special purpose vehicles.

(ii) All automobiles with GVWR less than or equal to 8,500 pounds which possess features that could apply to two classes will be classified by the Administrator based on the Administrator's judgment on which class of vehicles consumers are more likely to make comparisons.

(4) Once a certain car line is classified by the Administrator, the classification will remain in effect for the model year.

(b) *Interior volume index-passenger automobiles.* (1) The interior volume index shall be calculated for each car line which is not a ''two seater'' car line, in cubic feet rounded to the nearest 0.1 cubic foot. For car lines with more than one body style, the interior volume index for the car line is the arithmetic average of the interior volume indexes of each body style in the car line.

(2) For all body styles except station wagons, minivans and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seatbelts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume, if applicable, and the luggage capacity.

(3) For all station wagons, minivans and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seatbelts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume, and the cargo volume index.

(c) All interior and cargo dimensions are measured in inches to the nearest 0.1 inch. All dimensions and volumes shall be determined from the base vehicles of each body style in each car line, and do not include optional equipment. The dimensions H61, W3, W5, L34, H63, W4, W6, L51, H201, L205, L210, L211, H198, and volume V1 are to be determined in accordance with the procedures outlined in Motor Vehicle Dimensions SAE J1100a (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised September 1975) except as noted herein:

(1) *SAE J1100a(2.3).—Cargo dimensions.* All dimensions measured with the front seat positioned the same as for the interior dimensions and the second seat, for the station wagons, minivans and hatchbacks, in the upright position. All head restraints shall be in the stowed position and considered part of the seat.

(2) *SAE J1100a(8)—Luggage capacity.* Total of columns of individual pieces of standard luggage set plus H boxes stowed in the luggage compartment in accordance with the procedure described in 8.2. For passenger automobiles with no rear seat or with two rear seats with no rear seatbelts, the luggage compartment shall include the area to the rear of the front seat, with the rear seat (if applicable) folded, to the height of a horizontal plane tangent to the top of the front seatback.

(3) *SAE J1100a(7)—Cargo dimensions.* (i) *L210—Cargo length at second seatback height-hatchback.* The minimum horizontal dimension from the ''X'' plane tangent to the rearmost surface of the second seatback to the inside limiting interference of the hatchback door on the zero ''Y'' plane.

(ii) *L211—Cargo length at floor—second-hatchback.* The minimum horizontal dimensions at floor level from the rear of the second seatback to the normal limiting interference of the hatchback door on the vehicle zero ''Y'' plane.

(iii) *H198—Second seatback to load floor height.* The dimension measured vertically from the horizontal tangent to the top of the second seatback to the undepressed floor covering.

(d) The front seat volume is calculated in cubic feet by dividing 1,728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) H61—Effective head room—front. (In inches, obtained according to paragraph (c) of this section),

(2)(i) (W3+W5+5)/2—Average of shoulder and hip room—front, if hip room is more than 5 inches less than shoulder room. (In inches, W3 and W5 are obtained according to paragraph (c) of this section), or

(ii) W3—Shoulder room—front, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) L34—Maximum effective leg room—accelerator. (In inches, obtained according to paragraph (c) of this section.) Round the quotient to the nearest 0.001 cubic feet.

(e) The rear seat volume is calculated in cubic feet, for vehicles within a rear seat equipped with rear seat belts (as required by DOT), by dividing 1,728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) H63—Effective head room—second. (Inches obtained according to paragraph (c) of this section),

(2)(i) (W4+W6+5)/2—Average of shoulder and hip room—second, if hip room is more than 5 inches less than shoulder room. (In inches, W4 and W6 are obtained according to paragraph (c) of this section), or

(ii) W4—Shoulder room—second, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) L51—Minimum effective leg room—second. (In inches obtained according to paragraph (c) of this section.)

(f) The luggage capacity is V1, the usable luggage capacity obtained according to paragraph (c) of this section. For passenger automobiles with no rear seat or with a rear seat but no rear seat belts, the area to the rear of the front seat shall be included in the determination of V1, usable luggage capacity, as outlined in paragraph (c) of this section.

(g) *Cargo volume index.* (1) For station wagons and minivans the cargo volume index V2 is calculated, in cubic feet, by dividing 1,728 into the product of three terms and rounding the quotient to the nearest 0.001 cubic feet:

(i) W4—Shoulder room—second. (In inches obtained according to paragraph (c) of this section.)

(ii) H201—Cargo height. (In inches obtained according to paragraph (c) of this section.)

(iii) L205—Cargo length at belt—second. (In inches obtained according to paragraph (c) of this section.)

(2) For hatchbacks, the cargo volume index V3 is calculated, in cubic feet, by dividing 1,728 into the product of three terms:

(i) Average cargo length, which is the arithmetic average of:

(A) L210—Cargo length at second seatback height—hatchback. (In inches obtained according to paragraph (c) of this section);

(B) L211—Cargo length at floor—second-hatchback. (In inches obtained according to paragraph (c) of this section);

(ii) W4—Shoulder room—second. (In inches obtained according to paragraph (c) of this section);

(iii) H198—Second seatback to load floor height. (In inches obtained according to paragraph (c) of this section.) Round the quotient to the nearest 0.001 cubic foot.

(h) The following data must be submitted to the Administrator no later than the time of a general label request. Data shall be included for each body style in the car line covered by that general label.

(1) For all passenger automobiles:

(i) Dimensions H61, W3, L34 determined in accordance with paragraph (c) of this section.

(ii) Front seat volume determined in accordance with paragraph (d) of this section.

(iii) Dimensions H63, W4, L51 (if applicable) determined in accordance with paragraph (c) of this section.

(iv) Rear seat volume (if applicable) determined in accordance with paragraph (e) of this section.

(v) The interior volume index determined in accordance with paragraph (b) of this section for:

(A) Each body style, and

(B) The car line.

(vi) The class of the car line as determined in paragraph (a) of this section.

(2) For all passenger automobiles except station wagons, minivans and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The quantity and letter designation of the pieces of the standard luggage set installed in the vehicle in the determination of usable luggage capacity V1, and

(ii) The usable luggage capacity V1, determined in accordance with paragraph (f) of this section.

(3) For station wagons and minivans with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions H201 and L205 determined in accordance with paragraph (c) of this section, and

(ii) The cargo volume index V2 determined in accordance with paragraph (g)(1) of this section.

(4) For hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions L210, L211, and H198 determined in accordance with paragraph (c) of this section.

(ii) The cargo volume index V3 determined in accordance with paragraph (g)(2) of this section.

(5) For pickup trucks:

(i) All GVWR's of less than or equal to 8,500 pounds available in the car line.

(ii) The arithmetic average GVWR for the car line.

* * * * *

Subpart E—[Amended]

* * * * *

35. A new § 600.405–08 is added to read as follows:

§ 600.405–08 Dealer requirements.

(a) Each dealer shall prominently display at each location where new automobiles are offered for sale a copy of the annual Fuel Economy Guide containing the information specified in § 600.407. The Fuel Economy Guide may be made available either in hard copy or electronically via an on-site computer available for prospective purchasers to view and print as desired. The dealer shall provide this information without charge. The dealer will be expected to make this information available as soon as it is received by the dealer, but in no case later than 15 working days after notification is given of its availability. The Department of Energy will annually notify dealers of the availability of the information with instructions on how to obtain it either electronically or in hard copy.

(b) The dealer shall display the Fuel Economy Guide, or a notice of where the customer can electronically access the Fuel Economy Guide, in the same manner and in each location used to display brochures describing the automobiles offered for sale by the dealer. The notice shall include a link to the official Web site where this information is contained (*www.fueleconomy.gov.*)

(c) The dealer shall display the booklet applicable to each model year automobile offered for sale at the location.

* * * * *

36. A new § 600.407–08 is added to read as follows:

§ 600.407–08 Booklets displayed by dealers.

(a) Booklets displayed by dealers in order to fulfill the obligations of § 600.405 may be either

(1) The printed copy of the annual Fuel Economy Guide published by the Department of Energy, or;

(2) Optionally, dealers may display the Fuel Economy Guide on a computer that is linked to the electronic version of the Fuel Economy Guide (available at *www.fueleconomy.gov.*), or;

(3) A booklet approved by the Administrator of EPA containing the same information, format, and order as the Fuel Economy Guide published by the Department of Energy. Such a booklet may highlight the dealer's product line by contrasting color of ink or boldface type and may include other supplemental information regarding the dealer's product line subject to approval by the Administrator.

(b) A manufacturer's name and logo or a dealer's name and address or both may appear on the back cover of the hard copies of the Fuel Economy Guide.

Subpart F—[Amended]

* * * * *

37. A new § 600.507–08 is added to read as follows:

§ 600.507–08 Running change data requirements.

(a) Except as specified in paragraph (d) of this section, the manufacturer shall submit additional running change fuel economy data as specified in paragraph (b) of this section for any running change approved or implemented under 40 CFR 86.079–32, 86.079–33, or 86.082–34 or 40 CFR 86.1842–01 as applicable, which:

(1) Creates a new base level or,

(2) Affects an existing base level by:

(i) Adding an axle ratio which is at least 10 percent larger (or, optionally, 10 percent smaller) than the largest axle ratio tested.

(ii) Increasing (or, optionally, decreasing) the road-load horsepower for a subconfiguration by 10 percent or more for the individual running change or, when considered cumulatively, since original certification (for each cumulative 10 percent increase using the originally certified road-load horsepower as a base).

(iii) Adding a new subconfiguration by increasing (or, optionally, decreasing) the equivalent test weight

for any previously tested subconfiguration in the base level.

(b)(1) The additional running change fuel economy data requirement in paragraph (a) of this section will be determined based on the sales of the vehicle configurations in the created or affected base level(s) as updated at the time of running change approval.

(2) Within each newly created base level as specified in paragraph (a)(1) of this section, the manufacturer shall submit data from the highest projected total model year sales subconfiguration within the highest projected total model year sales configuration in the base level.

(3) Within each base level affected by a running change as specified in paragraph (a)(2) of this section, fuel economy data shall be submitted for the vehicle configuration created or affected by the running change which has the highest total model year sales. The test vehicle shall be of the subconfiguration created by the running change which has the highest projected total model year sales within the applicable vehicle configuration.

(c) The manufacturer shall submit the fuel economy data required by this section to the Administrator in accordance with § 600.314(b).

(d) For those model types created under § 600.208–08(a)(2), the manufacturer shall submit data for each subconfiguration added by a running change.

* * * * *

38. A new § 600.510–08 is added to read as follows:

§ 600.510–08 Calculation of average fuel economy.

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified in this section, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that is domestically manufactured as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that is not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made for the category of light trucks that is domestically manufactured as defined in § 600.511(e)(1).

(4) An average fuel economy calculation will be made for the category of light trucks that is not domestically manufactured as defined in § 600.511(e)(2).

(b) For the purpose of calculating average fuel economy under paragraph (c), of this section:

(1) All fuel economy data submitted in accordance with § 600.006(e) or § 600.512(c) shall be used.

(2) The combined city/highway fuel economy will be calculated for each model type in accordance with § 600.208–08 of this section except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced; and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg; and

(v) At the manufacturer's option, those vehicle configurations that are self-compensating to altitude changes may be separated by sales into high-altitude sales categories and low-altitude sales categories. These separate sales categories may then be treated (only for the purpose of this section) as separate configurations in accordance with the procedure of § 600.208–08(a)(4)(ii).

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206–08(a)(3) except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced; and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(c) Except as permitted in paragraph (d) of this section, the average fuel economy will be calculated individually for each category identified in paragraph (a) of this section as follows:

(1) Divide the total production volume of that category of automobiles; by

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a fraction determined by dividing:

(i) The number of automobiles of that model type produced by the manufacturer in the model year; by

(ii) For gasoline-fueled and diesel-fueled model types, the fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section; or

(iii) For alcohol-fueled model types, the fuel economy value calculated for that model type in accordance with paragraph (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg; or

(iv) For natural gas-fueled model types, the fuel economy value calculated for that model type in accordance with paragraph (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg; or

(v) For alcohol dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel fuel as determined in § 600.208(b)(5)(i); and

(B) The combined model type fuel economy value for operation on alcohol fuel as determined in § 600.208(b)(5)(ii) divided by 0.15 provided the requirements of § 600.510 (g) are met; or

(vi) For natural gas dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel as determined in § 600.208(b)(5)(i); and

(B) The combined model type fuel economy value for operation on natural gas as determined in § 600.208(b)(5)(ii) divided by 0.15 provided the requirements of paragraph (g) of this section are met.

(d) The Administrator may approve alternative calculation methods if they are part of an approved credit plan under the provisions of 15 U.S.C. 2003.

(e) For passenger categories identified in paragraphs (a)(1) and (2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$$AFE_{adj}=AFE[((0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487) / ((0.55 \times a) + 0.45)] + IW$$

Where:

AFE_{adj}=Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE=Average combined fuel economy as calculated in paragraph (c) of this

section, rounded to the nearest 0.0001 mpg.

a=Sales-weight average (rounded to the nearest 0.0001 mpg) of all model type highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model type city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

c=0.0022 for the 1986 model year.

c=A constant value, fixed by model year. For 1987, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available. For 1988 and later model years, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available.

$$IW=(9.2917 \times 10^{-3} \times SF_{3IWC} \times FE_{3IWC}) - (3.5123 \times 10^{-3} \times H\ SF_{4ETW} \times FE_{4IWC})$$

Note: Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWC}=The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

SF_{4ETW}=The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

FE_{4IWC}=The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

FE_{4IWC}=The sales-weighted average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administrator shall calculate and apply additional average fuel economy adjustments if, after notice and opportunity for comment, the Administrator determines that, as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determinations, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibility within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles;

(4) The impact of a change on average fuel economy is not solely due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effects on in-use fuel economy;

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

(g)(1) Alcohol dual fuel automobiles and natural gas dual fuel automobiles must provide equal or greater energy efficiency while operating on alcohol or natural gas as while operating on gasoline or diesel fuel to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section. The following equation must hold true:

E_{alt}/E_{pet}> or = 1

Where:

$E_{alt}=[FE_{alt}/(NHV_{alt} \times Dalt)] \times 10^6$=energy efficiency while operating on alternative fuel rounded to the nearest 0.01 miles/million BTU.

$E_{pet}=[FE_{pet}/(NHV_{pet} \times D_{pet})] \times 10^6$ = energy efficiency while operating on gasoline or diesel (petroleum) fuel rounded to the nearest 0.01 miles/million BTU.

FE_{alt} is the fuel economy [miles/gallon for liquid fuels or miles/100 standard cubic feet for gaseous fuels] while operated on the alternative fuel as determined in § 600.113–08(a) and (b);

FE_{pet} is the fuel economy [miles/gallon] while operated on petroleum fuel (gasoline or diesel) as determined in § 600.113(a) and (b);

NHV_{alt} is the net (lower) heating value [BTU/lb] of the alternative fuel;

NHV_{pet} is the net (lower) heating value [BTU/lb] of the petroleum fuel;

D_{alt} is the density [lb/gallon for liquid fuels or lb/100 standard cubic feet for gaseous fuels] of the alternative fuel;

D_{pet} is the density [lb/gallon] of the petroleum fuel.

(i) The equation must hold true for both the FTP city and HFET highway fuel economy values for each test of each test vehicle.

(ii)(A) The net heating value for alcohol fuels shall be determined per ASTM D 240 (Incorporated by reference as specified in § 600.011–93).

(B) The density for alcohol fuels shall be determined per ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113(f).

(2) For model years 1993 through 1995, alcohol dual fuel automobiles designed to operate on mixtures of alcohol and gasoline must, in addition to paragraph (g)(1) of this section, to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section, provide equal or superior energy efficiency while operating on a mixture of 50% alcohol, 50% gasoline by volume, as while operating on gasoline fuel. The following equation must hold true:

E_{50}/E_g> or = 1

Where:

$E_{50}=[FE_{50}/(NHV_{50} \times D_{50})] \times 10^6$ = energy efficiency while operating on 50% alcohol, 50% gasoline rounded to the nearest 0.01 miles/million BTU.

$E_g=[FE_g/(NHV_g \times D_g)] \times 10^6$ = energy efficiency while operating on gasoline fuel rounded to the nearest 0.01 miles/million BTU.

FE_{50} is the fuel economy [miles/gallon] while operated on 50% alcohol, 50% gasoline as determined in § 600.113(a) and (b);

FE_g is the fuel economy [miles/gallon] while operated on gasoline as determined in § 600.113(a) and (b);

NHV5. is the net (lower) heating value [BTU/lb] of the 50/50 blend;

NHVg is the net (lower) heating value [BTU/lb] of gasoline;

D_{50} is the density [lb/gallon] of the 50/50 blend;

D_g is the density [lb/gallon] of the gasoline.

(i) To demonstrate that the equation holds true for each engine family, the manufacturer will:

(A) Test one test vehicle in each engine family on both the FTP city and HFET highway cycles; or

(B) In lieu of testing, provide a written statement attesting that equal or superior energy efficiency is attained while using a 50% alcohol, 50% gasoline mixture compared to using 100% gasoline.

(ii)(A) The net heating value for the 50% alcohol, 50% gasoline mixture shall be determined by ASTM D 240 (Incorporated by reference as specified in § 600.011–93).

(B) The density for the 50% alcohol, 50% gasoline mixture shall be determined per ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113(f).

(3) Alcohol dual fuel passenger automobiles and natural gas dual fuel passenger automobiles manufactured during model years 1993 through 2004 must meet the minimum driving range requirements established by the Secretary of Transportation (49 CFR part 538) to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section.

(h) For each of the model years 1993 through 2004, and for each category of automobile identified in paragraph (a) of this section, the maximum increase in average fuel economy determined in paragraph (c) of this section attributable to alcohol dual fuel automobiles and natural gas dual fuel automobiles shall be 1.2 miles per gallon or as provided for in paragraph (i) of this section.

(1) The Administrator shall calculate the increase in average fuel economy to determine if the maximum increase provided in paragraph (h) of this section has been reached. The Administrator shall calculate the average fuel economy for each category of automobiles specified in paragraph (a) of this section by subtracting the average fuel economy values calculated in accordance with this section by assuming all alcohol dual fuel and natural gas dual fuel automobiles are operated exclusively on gasoline (or diesel) fuel from the average fuel economy values determined in paragraphs (b)(2)(vi), (b)(2)(vii), and (c) of this section. The difference is limited to the maximum increase specified in paragraph (h) of this section.

(2) [Reserved]

(i) In the event that the Secretary of Transportation lowers the corporate average fuel economy standard applicable to passenger automobiles below 27.5 miles per gallon for any model year during 1993 through 2004, the maximum increase of 1.2 mpg per year specified in paragraph (h) of this section shall be reduced by the amount the standard was lowered, but not reduced below 0.7 mpg per year.

39. A new § 600.510–08 is added to read as follows:

§ 600.510–08 Model year report.

(a) For each model year, the manufacturer shall submit to the Administrator a report, known as the model year report, containing all information necessary for the calculation of the manufacturer's average fuel economy. The results of the manufacturer calculations and summary information of model type fuel economy values which are contained in the average calculation shall be submitted to the Secretary of the Department of Transportation, National Highway and Traffic Safety Administration. (b)(1) The model year report shall be in writing, signed by the authorized representative of the manufacturer and shall be submitted no later than 90 days after the end of the model year.

(2) The Administrator may waive the requirement that the model year report be submitted no later than 90 days after the end of the model year. Based upon a request by the manufacturer, if the Administrator determines that 90 days is insufficient time for the manufacturer to provide all additional data required as determined in § 600.507, the Administrator shall establish a date by which the model year report must be submitted.

(3) Separate reports shall be submitted for passenger automobiles and light trucks (as identified in § 600.510).

(c) The model year report must include the following information:

(1) All fuel economy data used in the FTP/HFET-based model type calculations under § 600.208–08, and subsequently required by the Administrator in accordance with § 600.507;

(2) All fuel economy data for certification vehicles and for vehicles tested for running changes approved under 40 CFR 86.1842–01;

(3) Any additional fuel economy data submitted by the manufacturer under § 600.509;

(4) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510(b)(2);

(5) The manufacturer's average fuel economy value calculated according to § 600.510(c);

(6) A listing of both domestically and nondomestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made; and

(7) The authenticity and accuracy of production data must be attested to by the corporation, and shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the required attestation.

40. A new § 600.513–08 is added to read as follows:

§ 600.513–08 Gas Guzzler Tax.

(a) This section applies only to passenger automobiles sold after December 27, 1991, regardless of the model year of those vehicles. For alcohol dual fuel and natural gas dual fuel automobiles, the fuel economy while such automobiles are operated on gasoline will be used for Gas Guzzler Tax assessments.

(1) The provisions of this section do not apply to passenger automobiles exempted for Gas Guzzler Tax assessments by applicable federal law and regulations. However, the manufacturer of an exempted passenger automobile may, in its discretion, label such vehicles in accordance with the provisions of this section.

(2) For 1991 and later model year passenger automobiles, the combined FTP/HFET-based model type fuel economy value determined in § 600.208–08 used for Gas Guzzler Tax assessments shall be calculated in accordance with the following equation, rounded to the nearest 0.1 mpg:

$$FE_{adj}=FE[((0.55 \times a_g \times c) + (0.45 \times c) + (0.5556 \times a_g) + 0.4487) / ((0.55 \times a_g) + 0.45)] + IW_g$$

Where:

FE_{adj}=Fuel economy value to be used for determination of gas guzzler tax assessment rounded to the nearest 0.1 mpg.

FE=Combined model type fuel economy calculated in accordance with § 600.208–08, rounded to the nearest 0.0001 mpg.

a_g=Model type highway fuel economy, calculated in accordance with § 600.208–08, rounded to the nearest 0.0001 mpg divided by the model type city fuel economy calculated in accordance with § 600.208–08, rounded to the nearest 0.0001 mpg. The quotient shall be rounded to 4 decimal places.

c=gas guzzler adjustment factor=1.300×10^{-3} for the 1986 and later model years.

$$IW_g=(9.2917 \times 10^{-3} \times SF_{3IWCG} \times FE_{3IWCG}) - (3.5123 \times 10^{-3} \times SF_{4ETWG} \times FE_{4IWCG})$$

Note: Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWCG}=The 3000 lb. inertia weight class sales in the model type

divided by the total model type sales; the quotient shall be rounded to 4 decimal places.

SF_{4ETWG}=The 4000 lb. equivalent test weight sales in the model type divided by the total model type sales, the quotient shall be rounded to 4 decimal places.

FE_{3IWCG}=The 3000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

FE_{4IWCG}=The 4000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy f/rounded to the nearest 0.001 mpg.

(b)(1) For passenger automobiles sold after December 31, 1990, with a combined FTP/HFET-based model type fuel economy value of less than 22.5 mpg (as determined in sec. 600.208–08), calculated in accordance with paragraph (a)(2) of this section and rounded to the nearest 0.1 mpg, each vehicle fuel economy label shall include a Gas Guzzler Tax statement pursuant to 49 U.S.C. 32908(b)(1)(E). The tax amount stated shall be as specified in paragraph (b)(2) of this section.

(2) For passenger automobiles with a combined general label model type fuel economy value of:

(i) At least 22.5 mpg, no Gas Guzzler Tax statement is required.

(ii) At least 21.5 mpg, but less than 22.5 mpg, the Gas Guzzler Tax statement shall show a tax of $1,000.

(iii) At least 20.5 mpg, but less than 21.5 mpg, the Gas Guzzler Tax statement shall show a tax of $1,300.

(iv) At least 19.5 mpg, but less than 20.5 mpg, the Gas Guzzler Tax statement shall show a tax of $1,700.

(v) At least 18.5 mpg; but less than 19.5 mpg, the Gas Guzzler Tax statement shall show a tax of $2,100.

(vi) At least 17.5 mpg, but less than 18.5 mpg, the Gas Guzzler Tax statement shall show a tax of $2,600.

(vii) At least 16.5 mpg, but less than 17.5 mpg, the Gas Guzzler Tax statement shall show a tax of $3,000.

(viii) At least 15.5 mpg, but less than 16.5 mpg, the Gas Guzzler Tax statement shall show a tax of $3,700.

(ix) At least 14.5 mpg, but less than 15.5 mpg, the Gas Guzzler Tax statement shall show a tax of $4,500.

(x) At least 13.5 mpg, but less than 14.5 mpg, the Gas Guzzler Tax statement shall show a tax of $5,400.

(xi) At least 12.5 mpg, but less than 13.5 mpg, the Gas Guzzler Tax statement shall show a tax of $6,400.

(xii) Less than 12.5 mpg, the Gas Guzzler Tax statement shall show a tax of $7,700.

41. Appendix II to Part 600 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

Appendix II to Part 600—Sample Fuel Economy Calculations

* * * * *

(b) This sample fuel economy calculation is applicable to 1988 and later model year automobiles.

(1) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = .139 grams/mile
CO = 1.59 grams/mile
CO_2 = 317 grams/mile

(2) Assume that the test fuel used for this test had the following properties:

SG=0.745
CWF=0.868
NHV=18,478 Btu/lb.

(3) According to the procedure in § 600.113–88, the city fuel economy or MPG_c, for the vehicle may be calculated by substituting the HC, CO, and CO_2 gram/mile values and the SG, CWF, and NHV values into the following equation:

$$MPG_c = \left(5174 \times 10^4 \times CWF \times SG\right) / \left[\left(\left(CWF \times HC\right) + \left(0.429 \times CO + \left(0.273 \times CO_2\right)\right)\left(\left(0.6 \times SG \times NHV\right) + 5471\right)\right)\right]$$

$$MPG_c = \left(5174 \times 10^4 \times 0.868 \times 0.745\right) / \left[\left(0.868 \times .139 \times 0.429 \times 1.59 + 0.273 \times 317\right)\left(0.6 \times 0.745 \times 18478 + 5471\right)\right]$$

$$MPG_c = 27.9$$

(4) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and a calculation similar to that shown in (b)(3) resulted in a highway fuel economy of MPG_h of 36.9. According to the procedure in § 600.113, the combined fuel economy (called $MPG_{c/h}$) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.55}{27.9} + \frac{0.45}{36.9}}$$

$$MPG_{c/h} = 31.3$$

(c) For 2008 and later model year vehicles, the combined fuel economy for the purpose of determining annual fuel costs under § 600.307–08(g) is determined by substituting the city and highway fuel economy into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.43}{MPG_c} + \frac{0.57}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.43}{27.9} + \frac{0.57}{36.9}}$$

$$MPG_{c/h} = 32.4$$

42. Appendix III to Part 600 is revised to read as follows:

Appendix III to Part 600—Sample Fuel Economy Label Calculation

Suppose that a manufacturer called Mizer Motors has a product line composed of eight car lines. Of these eight, four are available with the 3 liter, 6 cylinder and 3-way catalyst engine. These four car lines are:

Ajax
Boredom III
Dodo
Castor (Station Wagon)

A car line is defined in subpart A as a group of vehicles within a make or division which has a degree of commonality in construction. Car line does not consider any level of decor or opulence and is not generally distinguished by such characteristics as roofline, number of doors, seats, or windows. Station wagons and light duty trucks are, however, identified separately from the remainder of each car line. In other words, a Castor station wagon would be considered a different car line than the normal Castor car line made up of sedans, coupes, etc.

The engine considered here is defined as a basic engine in subpart A of this part. A basic engine is a unique combination of fuel

system, number of cylinders, catalyst usage and engine displacement. A model type is a unique combination of car line, basic engine, and transmission class. Thus Ajax is a car line but Ajax 3 liter, 6 cylinder manual transmission is a model type whereas Ajax 3 liter, 6 cylinder automatic transmission is a different model type.

The following calculations provide an example of the procedures described in subpart C of this part for the calculation of vehicle configuration and model type fuel economy values. In order to simplify the presentation, only city fuel economy values are included. The procedure is identical for highway and combined fuel economy values.

Step I. Input data as supplied by the manufacturer or as determined from testing conducted by the Administrator.

Manufacturer—Mizer Motors.

Basic Engine: (3 liter, 6 cylinder, 3-way catalyst).

Test vehicle carline	Engine code	Transmission	Inertia weight	Axle ratio	Avg. MPG	Label MPG [1]	Veh config. sales
Ajax	1	M–3	3500	2.73	16.1001	16	15,000
Ajax	2	A–3	3500	2.56	15.9020	16	35,000
Boredom III	4	M–3	4000	3.08	14.2343	14	10,000
Ajax	3	M–4	4000	3.36	15.0000	15	15,000
Boredom III	8	A–3	4000	2.56	13.8138	14	25,000
Boredom III	5	A–3	4500	3.08	13.2203	13	20,000
Castor	5	A–3	5000	3.08	10.6006	11	40,000

[1] The vehicle 5-cycle configuration fuel economy values, rounded to the nearest mile per gallon, are the fuel economy values that would be used on specific labels for that vehicle configuration.

Step II. Group vehicle fuel economy and sales data according to base level combinations within this basic engine.

Base level	Transmission	Inertia weight	Miles per gallon	Projected veh. config. sales
A	Manual—3	3,500	16.1001	15,000
B	Automatic	3,500	15.9020	35,000
C	Manual—3	4,000	14.2343	10,000
C	Manual—4	4,000	15.0000	15,000
D	Automatic	4,000	13.8138	25,000
E	Automatic	4,500	13.2203	20,000
F	Automatic	5,000	10.6006	40,000

Step III. Determine base level fuel economy values.

A. For all the base levels except the base level which includes 4,000 pound, manual transmission data, the base level fuel economy is as noted in Step II since only one vehicle configuration was tested within each of these base levels.

3,500 lb/manual transmission	16.1001 mpg.
3,500 lb/automatic transmission	15.9020 mpg.
4,000 lb/automatic transmission	13.8138 mpg.
4,500 lb/automatic transmission	13.2203 mpg.
5,000 lb/automatic transmission	10.6006 mpg.

B. Since data from more than one vehicle configuration are included in the 4,000-pound, manual transmission base level, this fuel economy is harmonically averaged in proportion to the percentage of total sales of all vehicle configurations tested within that base level represented by each vehicle configuration tested within that base level.

$$\text{Base level fuel economy} = \frac{1}{\left[\begin{array}{l}\text{Fraction of total sales of configurations}\\ \text{tested represented by}\\ \text{configuration No. 1 sales}\end{array}\right]\left[\dfrac{1}{\begin{array}{c}\text{Configuration}\\ \text{No. 1 fuel economy}\end{array}}\right]\left[\begin{array}{l}\text{Fraction of total sales}\\ \text{of configurations tested}\\ \text{represented by configuration}\\ \text{No. 2 sales}\end{array}\right]\left[\dfrac{1}{\begin{array}{c}\text{Configuration}\\ \text{No. 2 fuel economy}\end{array}}\right]}$$

Base level: Manual transmission, 4000 pounds:

$$\frac{1}{\left[\frac{10000}{25000}\right]\frac{1}{14.2343}+\left[\frac{15.000}{250000}\right]\frac{1}{15.0000}}=14.6840 \text{ miles per gallon}$$

Therefore, the 4000 pound, manual transmission fuel economy is 14.6840 miles per gallon.

Note that the car line of the test vehicle using a given engine makes no difference—only the weight and transmission do.

Step IV. For each model type offered by the manufacturer with that basic engine, determine the sales fraction represented by each inertia weight/transmission class combination and the corresponding fuel economy.

Ajax	Manual	1.0000 at 3,500 lb	16.1001
	Automatic	0.3000 at 3,500 lb	15.9020
		0.7000 at 4,000 lb	13.8138
Dodo	Manual	0.4000 at 3,500 lb	16.1001
		0.6000 at 4,000 lb	14.6840
	Automatic	0.3000 at 3,500 lb	15.9020
		0.7000 at 4,000 lb	13.8138
Boredom III	Manual	1.0000 at 4,000 lb	14.6840
	Automatic	0.2500 at 4,000 lb	13.8138
		0.7500 at 4,500 lb	13.2203
Castor	Automatic	0.2000 at 4,500 lb	13.2203
		0.8000 at 5,000 lb	10.6006

Step V. Determine fuel economy for each model type (that is, car line/basic engine/transmission class combination).

$$\text{Ajax, 3 liter, 6 cylinder, automatic MPG}$$

$$=\frac{1}{\frac{\text{The fraction of Ajax vehicles using the 3 liter, 6 cylinder engine which fall in the 3500 lb inertia weight class with an automatic transmission}}{\text{Fuel economy for 3 liter, 6 cylinder 3500 lb automatic transmission base level}}+\left[\frac{\text{The fraction of Ajax vehicles using the 3 liter, 6 cylinder engine which fall in the 4000 lb inertia weight class with an automatic transmission}}{\text{Fuel economy for 3 liter 6 cylinder 4000 lb automatic transmission base level}}\right]}$$

$$=\frac{1}{\left[\frac{0.3000}{15.9020}\right]+\left[\frac{0.7000}{13.8138}\right]}=14.3803 \text{ mpg}$$

Similarly,
Ajax 3 liter, 6 cylinder, manual MPG = 16.16 MPG [1]

$$\text{Dodo 3 liter, 6 cylinder manual MPG}=\frac{1}{\left[\frac{0.4000}{16.1001}\right]+\left[\frac{0.6000}{14.6840}\right]}=15.2185=15 \text{ MPG}^{1}$$

[1] The 5-cycle model type fuel economy values, rounded to the nearest mile per gallon, are the fuel economy values as used on general labels for that model year.

$$\text{Dodo 3 liter, 6 cylinder automatic MPG} = \frac{1}{\left[\frac{0.3000}{15.9020}\right] + \left[\frac{0.7000}{13.8138}\right]} = 15.2185 = 15\ \text{MPG}^{1}$$

Boredom III 6 liter 6 cylinder manual MPG=14.6840=15 mi./gal.7 [1]

$$\text{Boredom III 6 liter, 6 cylinder automatic MPG} = \frac{1}{\left[\frac{0.2500}{13.8138}\right] + \left[\frac{0.7500}{13.2203}\right]} = 13.3638 = 13\ \text{MPG}^{1}$$

$$\text{Castor 3 liter, 6 cylinder automatic MPG} = \frac{1}{\left[\frac{0.2000}{13.2203}\right] + \left[\frac{0.8000}{10.6006}\right]} = 11.0381 = 11\ \text{MPG}^{1}$$

Note that even though no Dodo was actually tested, this approach permits its fuel economy figure to be estimated, based on the inertia weight distribution of projected Dodo sales within a specific engine and transmission grouping.

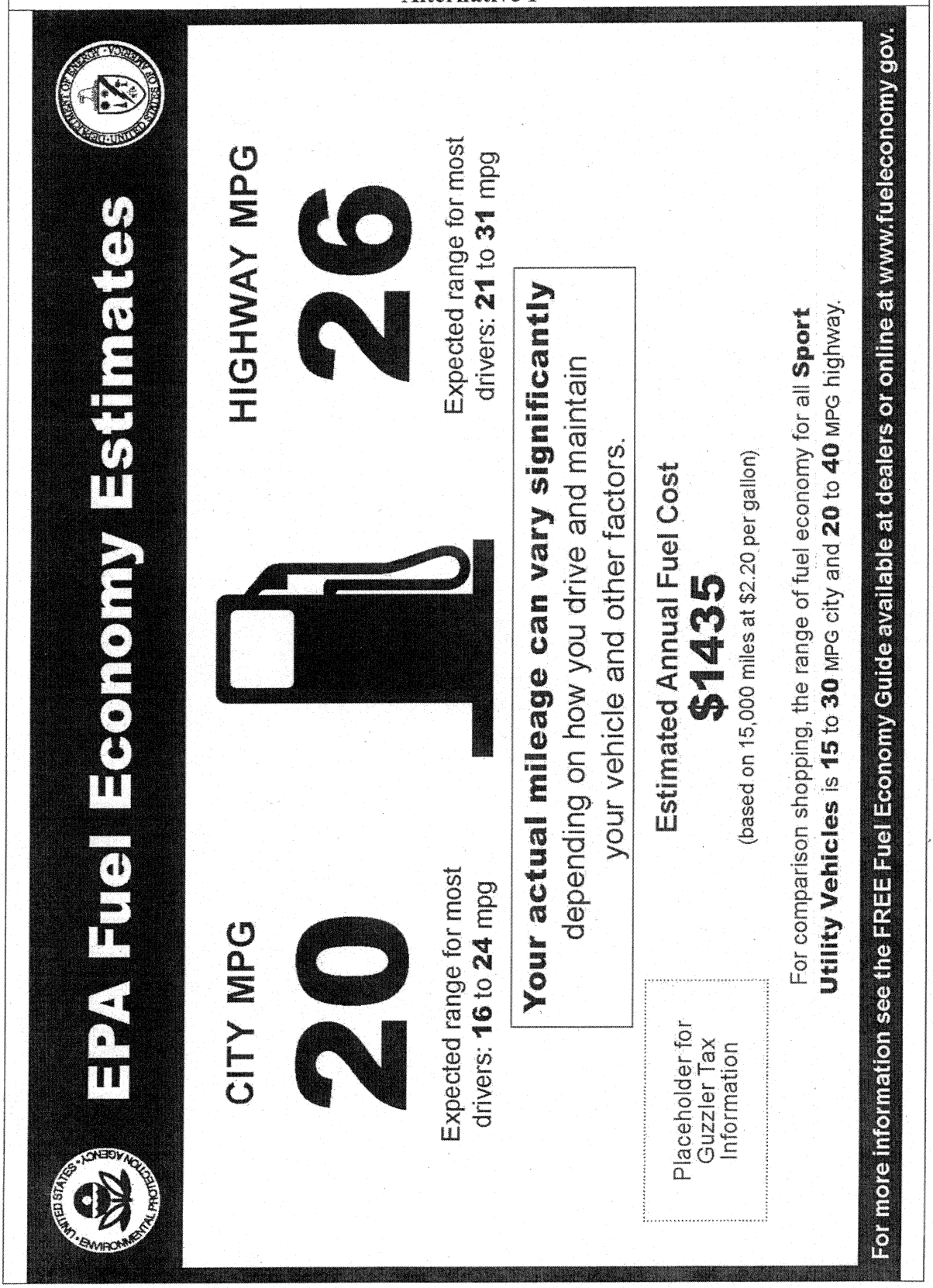
43. A new Appendix IV is added to read as follows:

Appendix IV to Part 600—Fuel Economy Label Formats for 2008 and Later Model Year Vehicles

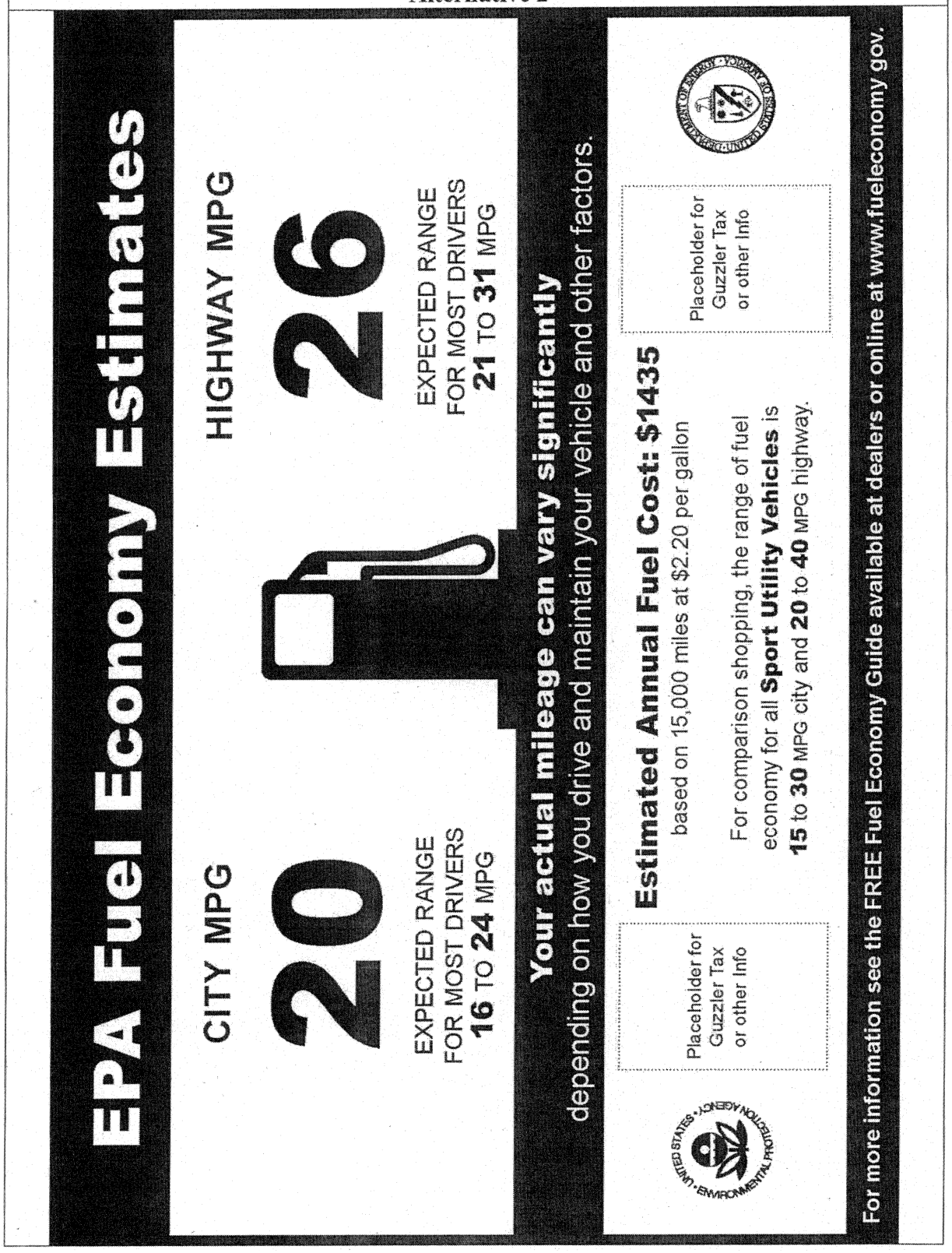
Gasoline-fueled vehicle label

BILLING CODE 6560–50–P

Alternative 1



Alternative 2



Alternative 3

EPA Fuel Economy Estimates

CITY MPG **20** EXPECTED RANGE FOR MOST DRIVERS **16** TO **24** MPG

HIGHWAY MPG **26** EXPECTED RANGE FOR MOST DRIVERS **21** TO **31** MPG

Your actual mileage can vary significantly depending on how you drive and maintain your vehicle and other factors.

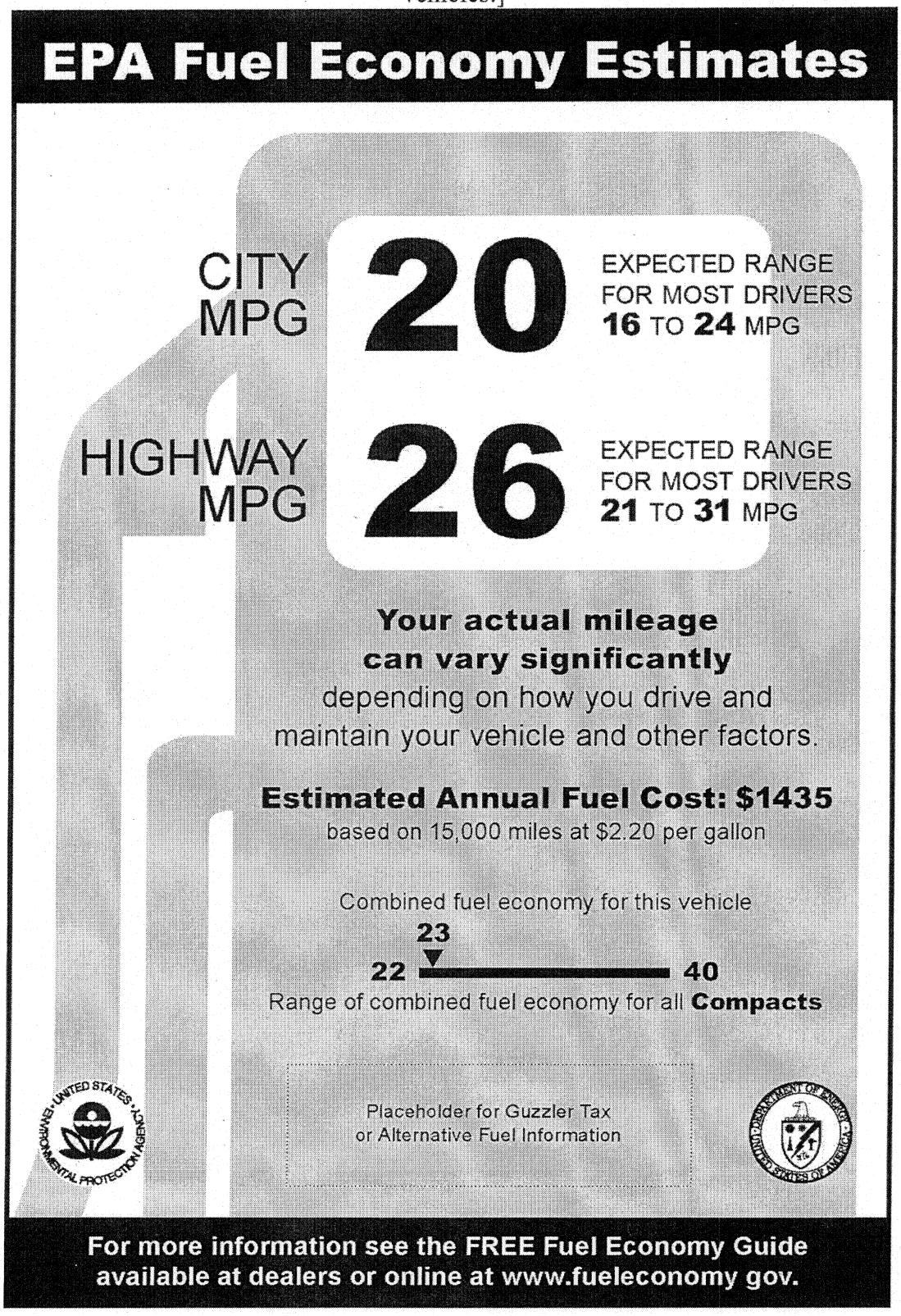
Estimated Annual Fuel Cost: $1435
based on 15,000 miles at $2.20 per gallon

For comparison shopping, the range of fuel economy for all **Sport Utility Vehicles** is **15** to **30** MPG city and **20** to **40** MPG highway.

Placeholder for Guzzler Tax
or Alternative Fuel Information

For more information see the FREE Fuel Economy Guide available at dealers or online at www.fueleconomy gov.

[Proposed Alternative showing graphic presentation of fuel economy range for comparable vehicles:]



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BILLING CODE 6560–50–C

Federal Register

Wednesday,
February 1, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Critical Habitat for the Alabama Beach Mouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU46

Endangered and Threatened Wildlife and Plants; Critical Habitat for the Alabama Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat for the endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,298 acres (ac) (525 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Baldwin County, Alabama.

DATES: We will accept comments from all interested parties until April 3, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by March 20, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of the following methods:

1. You may submit written comments and information to the Acting Field Supervisor, U.S. Fish and Wildlife Service, Daphne Fish and Wildlife Office, 1208–B Main Street, Daphne, AL 36526.
2. You may hand-deliver written comments to our office, at the above address.
3. You may send comments by electronic mail (e-mail) to *Abmcriticalhabitat@fws.gov*. Please see ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION** for file format and other information about electronic filing.
4. You may fax your comments to 251–441–6222.
5. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Daphne Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Acting Field Supervisor, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526 (telephone 251–441–5181, facsimile 251–441–6222) or visit our Web site at *http://www.fws.gov/daphne/.*

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Because we want any final action resulting from this proposal to be as accurate and as effective as possible, we ask for comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any threats to the species caused by designation;

(2) Specific information on the amount and distribution of Alabama beach mouse (ABM) habitat, including areas occupied by the ABM at the time of listing and containing the features essential to the conservation of the species, and areas not occupied at the time of listing that are essential to the conservation of the species;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments; and

(6) Information regarding the benefits of exclusion or inclusion of the 337 acres (136 ha) within the proposed critical habitat revision that are owned by the State near the Fort Morgan Historic Site in Unit 1, but that are managed by the Service through a cooperative management agreement with the Alabama Historical Commission.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *abmcriticalhabitat@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: critical habitat [AU46]'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Daphne Fish and Wildlife Office at phone number 251–441–5181. Please note that the Internet address *abmcriticalhabitat@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require

specific actions to restore or improve habitat.

Currently, only 470 species, or 37 percent of the 1,264 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,264 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004). In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. Rather, it relies on the guidance issued by the Director in response to the *Gifford Pinchot* decision (see ''Adverse Modification Standard'' discussion below). The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4371 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

We intend to discuss only those topics directly relevant to the critical habitat revision in this proposed rule. For more information on the Alabama beach mouse, refer to the final listing rule published in the **Federal Register** on June 6, 1985 (50 FR 23872).

The Alabama beach mouse (ABM) is one of five subspecies of the oldfield mouse that inhabit coastal dune communities along the northern coast of the Gulf of Mexico. It is a nocturnal rodent that burrows in primary, secondary, and scrub dunes, and feeds on a variety of dune plants and insects (Rave and Holler 1992; Moyers 1996; Sneckenberger 2001).

The ABM was historically restricted to approximately 33.5 miles of coastline in Baldwin County, Alabama, including the Fort Morgan Peninsula, Gulf Shores and Orange Beach, and Ono Island (50 FR 23872; Holliman 1983; Meyers 1983; Holler and Rave 1991). At the time of listing, the ABM was thought to occupy 10.6 miles of this historic range (50 FR 23872), based on reports by Holliman (1983), who concluded that ABM were found only on 333 acres of habitat and had been extirpated from Ono Island, and contemporaneous research by Meyers (1983) and Dawson (1983). Approximately 1,034 acres, divided into three distinct zones that collectively represented the known range of the subspecies, were designated as critical habitat at the time of listing (50 FR 23872). This original critical habitat designation consisted almost entirely of primary and secondary dunes. Primary constituent elements (PCEs) were defined as dunes and interdunal areas, and associated grasses and shrubs that provide food and cover (50 FR 23872). Presently, we estimate that approximately 2,600 acres of ABM habitat exist throughout the historic range (Service 2003).

Coastal dune habitat along the Baldwin County, Alabama, coastline is generally categorized as primary dunes, secondary dunes, interdunal swales, and scrub dunes. Primary dunes consist of a continuous line of dunes immediately landward of the wet beach characterized by sea oats (*Uniola paniculata*) and other grasses such as bluestem (*Schizachyrium maritimum*) and seaside panicum (*Panicum amarum*). Secondary dunes are more sparsely vegetated rows of smaller sand dunes found landward of primary dunes, often containing such plants as woody goldenrod (*Chrysoma*

pauciflosculosa) and false rosemary (*Conradina canescens*) in addition to primary dune plants described above. Interdunal swales and seasonal wetlands are sometimes associated with secondary dune systems. These areas are generally bare sand, but may contain low spots with large-headed nutgrass (*Juncus megacephalus*) and yellow nutgrass (*Cyperus esculentus*). Scrub dunes, located landward of the secondary dunes, are higher-elevation interior habitats that are often dominated by scrub oaks (Quercus spp.) and yaupon holly (*Ilex vomitoria*). The highest scrub habitat, called escarpment, often reaches elevations of 30 feet (9 meters) or more (Baldwin County 2004) above sea level, and occurs along an east-west line throughout the middle part of the Fort Morgan Peninsula. The transition from scrub habitat to maritime forest, which is characterized by large trees (pines and oaks), thick leaf litter, and dense understory vegetation, frequently serves to delineate the landward extent of suitable beach mouse habitat.

Since the ABM was listed, continued research has refined previous knowledge of its habitat requirements, as well as factors influencing its use of habitat. The findings most pertinent to this revision of critical habitat involve the role of scrub dune habitat in the population biology of the subspecies. Contrary to the early belief that beach mice were restricted to (Howell 1909; 1921; Ivey 1949), or preferred, the frontal dunes (Blair 1951; Pournelle and Barrington 1953; Bowen 1968), more recent research has shown that scrub habitat serves an invaluable role in the persistence of ABM populations (Swilling et al. 1998; Sneckenberger 2001). ABM occupy scrub habitat on a permanent basis and, studies have found no detectable differences between scrub and frontal dunes in beach mouse body mass, home range size, dispersal, reproduction, survival, food quality, and burrow site availability (Swilling et al. 1998; Swilling 2000; Sneckenberger 2001). While seasonally abundant, the availability of food resources in the primary and secondary dunes fluctuates (Sneckenberger 2001). In contrast, the scrub habitat provides a more stable level of food resources. This becomes crucial when food is scarce or nonexistent in the primary and secondary dunes and suggests that access to scrub dune habitat, in addition to primary and secondary dune habitat, is essential to ABM.

In addition to providing burrow sites, food resources, and cover, scrub dune habitat also serves as a high-elevation refuge during storm events and as a population source as the frontal and secondary dunes recover (Swilling et al. 1998; Sneckenberger 2001). Hurricanes can severely affect ABM, as tidal surge and wave action overwash habitat, leaving a flat sand surface denuded of vegetation and shearing or eroding primary dunes and occasionally forming new channels between the Gulf of Mexico and bays and lagoons, creating barriers to beach mouse migration (Johnson 1997; Swilling et al. 1998; Service 2004a). Sand is also deposited inland, completely or partially covering vegetation (Johnson 1997; Swilling et al. 1998; Service 2004a). Until frontal dune topography and vegetation redevelop, scrub habitat maintains beach mice populations and has the majority of food resources and potential burrow sites (Lynn 2000; Sneckenberger 2001). While storms temporarily reduce population densities (often severely) and impact dune habitat, this disturbance regime maintains open habitat and retards woody plant succession, yielding a habitat more suitable for beach mice than one lacking disturbance.

The low-nutrient soil of the coastal dune ecosystem receives a pulse of nutrients from the deposition of vegetative debris along the coastline (Lomascolo and Aide 2001). Therefore, as the primary and secondary dunes recover, and food plants develop to take advantage of the newly available nutrients, beach mice readily recolonize this habitat. Habitat recovery times vary depending upon factors such as hurricane characteristics (i.e., severity, amount of associated rain, position of habitat relative to storm eye, storm speed), successional stage of habitat prior to hurricane, and habitat elevation, impact to habitat from hurricane clean-up efforts, amount of precipitation, and restorative actions post hurricane. Depending on these factors, recovery of habitat may take from 1 year to over 40 years (Johnson 1997; Boyd et al. 2003; Traylor-Holzer et al. 2005).

Local extinctions (and subsequent recolonizations) within fragmented populations are common events (Fahrig and Merriam 1992; Stacey and Taper 1992). Habitat fragmentation, identified in the original listing rule as a threat to ABM, continues to be the major threat to ABM conservation, especially when combined with the effects of hurricanes. ABM habitat has been fragmented by human development. Historically, habitats in lower elevations, where ABM were extirpated from hurricane-induced storm surge, were recolonized as population densities increase and dispersal occurs from adjacent populated areas. Despite local extirpations due to storm events or the harsh, stochastic nature of coastal ecosystems, beach mouse populations and genetic integrity (Wooten 1994) would naturally recover and persist provided that sufficient habitat was available for population expansion following ''bottleneck'' events. Functional pathways between scrub habitat and lower-elevation dunes more severely impacted by storm events, allowing for dispersal, foraging, and mate finding behavior, are therefore essential to the conservation of the species.

Much of the original 33.5 miles of ABM habitat has been fragmented due to roads, buildings, parking lots, walls, bulkheads, and non-native landscaping, and functional beach mouse pathways between high-elevation scrub and frontal dunes are increasingly scarce. Rangewide (east-west) habitat continuity has likewise suffered as a result of human development activities. Because one hurricane could easily impact the entire range of the ABM, the conservation of remaining east-west and north-south habitat connections throughout the range of the ABM, allowing the naturally occurring cycle of local extirpations and subsequent recolonizations to continue, is of paramount conservation importance.

Previous Federal Actions

For more information on previous Federal actions concerning the ABM, refer to the final listing rule published in the **Federal Register** on June 6, 1985 (50 FR 23872), or our 12-month petition finding published in the **Federal Register** on September 26, 2000 (65 FR 57800), in which we announced that revision of critical habitat for the Alabama, Choctawhatchee, and Perdido Key beach mice was warranted.

Until now, work on the revision of critical habitat for the Alabama beach mouse and the other two beach mouse subspecies has been precluded due to other, higher priority listing and critical habitat actions. On June 17, 2003, a lawsuit was filed in the U.S. District Court for the Southern District of Alabama (*The Sierra Club and the Center for Biological Diversity* v. *Norton*: 1:03–CV–00377–CB), alleging that we violated the Act by failing to revise critical habitat, and that the revision was withheld or unreasonably delayed under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). In a December 2004 declaration filed with the Court, we stated that we would submit to the **Federal Register** a proposed rule revising ABM critical habitat by January 18, 2006, and a final rule by January 15, 2007. A proposed rule revising critical habitat for the Choctawhatchee and

Perdido Key beach mice was published in the **Federal Register** on December 15, 2005 (70 FR 74426).

We briefed the ABM recovery team on our general plans to revise critical habitat for the ABM on May 16, 2005. On November 9, 2005, we briefed State and Federal agencies on the critical habitat process and our 2004 declaration and on November 10, 2005, we held a critical habitat informational meeting for the general public at the City of Gulf Shores auditorium in Gulf Shores, Alabama, to discuss the critical habitat process.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known and using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing. An area that is currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing rule for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas that contain the physical and biological features essential to the conservation of the subspecies (see Primary Constituent Elements section). We have reviewed the overall approach to conservation of the subspecies undertaken by the local, State, and Federal agencies operating within the species' range since its listing, the original ABM recovery plan (Service 1987).

In our development of the primary constituent elements (PCEs) and criteria for determining critical habitat (see Criteria section), we reviewed the available information pertaining to the historic and current distributions, life histories, habitats of, and threats to beach mice in general, and where possible, to the ABM in particular. We have also reviewed available information that pertains to the population biology and habitat requirements of the ABM or closely related subspecies, including data in reports submitted during section 7 consultations, and as a requirement from section 10(a)(1)(B) incidental take permits or section 10(a)(1)(A) recovery permits; hurricane-induced storm surge inundation estimates from field data and models, research published in peer-reviewed articles and presented in academic theses and agency reports; Geographic Information System (GIS) coverages; and the ABM habitat map produced by Service in 2003. We have also reviewed our own site-specific

subspecies and habitat information, trapping data, recent biological surveys, and reports and communication with other qualified biologists or experts.

We began our analysis by considering the historic habitat available to the subspecies. Early accounts of the ABM and the 1985 listing document indicate that the natural historic range of the species stretched from the tip of the Fort Morgan Peninsula (presently Fort Morgan State Historic Site) eastward to Perdido Pass in Baldwin County, Alabama (Howell 1909; Bowen 1968; 50 FR 23872; Holler and Rave 1991). The north-south extent of this historic range is uncertain. Early research and collection efforts focused on frontal dunes and, therefore, we were unaware of the extent of scrub habitat usage by the subspecies until recent studies became available. We now understand beach mice in higher-elevation habitat tend to survive hurricanes, and high-elevation scrub habitat serves as a refuge from storms for mice in frontal dunes (Swilling *et al.* 1998; Sneckenberger 2001; Service 2004a). It is reasonable to assume that ABM, which evolved in a dynamic coastal environment driven in part by hurricane activity, have always utilized high-elevation scrub habitats for survival during and after major storm events.

We next employed five steps to identify our proposed critical habitat units. We first considered our 2003 ABM habitat map, which is based on the best available trapping and habitat data, and utilized in permitting decisions, interagency consultation, and research studies involving the subspecies. This map contains all of those areas that were occupied at the time of listing and that have been found to be occupied since listing, that are still available to the ABM. Secondly, at those sites, we identified, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical and biological habitat features (also called primary constituent elements, or PCEs) (see PCE section) that are essential to the conservation of the species. We then determined the subset of the habitat identified in the ABM habitat map that contains those PCEs. These areas were then mapped using ArcMap 9, a GIS program developed by the Environmental Systems Research Institute, Inc. Our mapping process was based on the need to exclude areas that lack PCEs, while simultaneously accounting for the dynamic nature of coastal habitat. We mapped critical habitat units at each site based on the extent of habitat containing sufficient PCEs necessary to support biological functions of the ABM. We depicted the mapped shoreline according to the mean high water line (MHWL), although the land configurations of these coastal areas change dramatically through time. Landward boundaries of the units, which frequently consist of urban areas or maritime forest, are more stable and provide easily discernable landmarks when visiting a proposed critical habitat unit. In the fifth and final step, we identified any of the mapped areas that do not meet the definition of critical habitat under section 3(5)(A) of the Act, and units that may be excluded based on section 4(b)(2) of the Act (see the Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act, below, for a detailed description).

Many areas within the broad historic range of the subspecies, once occupied by ABM, are no longer capable of supporting them because of conversion for human use or isolation due to human development patterns (Endangered Species Consulting Services 2002; Service 2003). Developed areas, including beachfront condominium complexes within the cities of Gulf Shores and Orange Beach, the entire length of Ono Island, and the footprints of existing developments throughout the Fort Morgan Peninsula, were eliminated from consideration for critical habitat.

We eliminated from consideration those areas that have been impacted by development by consulting our 2003 ABM habitat map (Service 2003), GIS coverages, and additional trapping data. While the quality of habitat ebbs and flows in response to impacts and hurricanes and tropical storms, the 2003 map, combined with trapping information and observations since 2003, represents our best estimate of habitat occupied by the ABM at the time of listing, and from the time of listing until present. The 2003 map includes all areas, according to trapping conducted or funded by both the Service and section 10(A)(1)(a) recovery permit holders, presently occupied by the ABM. Through a careful analysis of habitat continuity, trapping data, and anthropogenic impacts, we determined which subset of this current habitat contains the PCEs (see Primary Constituent Elements section). This resulted in 2,360 ac (955 ha) of occupied habitat with features that we found to be essential to the conservation of the subspecies. For comparison, this includes almost all critical habitat originally designated at the time of listing, as well as scrub habitat now known to contain features that are essential to the ABM.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific data available and to consider within areas occupied by the species at the time of listing those physical and biological features that are essential to the conservation of the species (PCEs), and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs essential for the ABM are derived from its biological needs as described in the Background section of this proposal, and are set forth in additional detail provided below.

Space for Individual and Population Growth and Normal Behavior

Long-term trapping data have shown that ABM densities are cyclic and fluctuate by magnitudes on a seasonal and annual basis (Swilling et al. 1998; Sneckenberger 2001; Rave and Holler 1992). These fluctuations can be a result of reproduction rates, food availability, habitat quality and quantity, catastrophic events, disease, and predation (Blair 1951; Bowen 1968; Smith 1971; Hill 1989; Rave and Holler 1992; Swilling et al. 1998; Swilling 2000; Sneckenberger 2001). Without suitable habitat sufficient in size to support the natural cyclic nature of beach mouse populations, subspecies are at risk from local extirpation and extinction, and may not attain the densities necessary to persist through storm events and seasonal fluctuations of resources. The conservation of multiple large, contiguous tracts of habitat is a key to the persistence of beach mice.

A variety of habitat types is needed to conserve ABM populations due to the dynamic nature of the coastal environment. Large, contiguous habitat areas that contain an intact continuum of habitat from the primary dunes landward to high-elevation scrub dunes are perhaps the most important to the persistence of the ABM. Contiguous habitat allows for natural behavior such as dispersal and exploratory

movements, as well as gene flow to maintain genetic variability of the population.

However, very few tracts with this structure currently exist. Because much of occupied ABM habitat has been fragmented by human development and is, therefore, neither large in size nor contiguous, the maintenance of multiple populations and habitat connectivity (see discussion below) is crucial. Local extinctions (and subsequent recolonizations) within fragmented populations are common events (Fahrig and Merriam 1992; Stacey and Taper 1992). Species that are protected across their ranges have lower probabilities of extinction (Soulé and Wilcox 1980). The ABM is a narrowly endemic subspecies restricted to less than 34 miles (54 km) of coastline, and one major hurricane could easily affect the entire population. Impacts within individual hurricanes, however, can vary greatly in intensity, and wide fluctuations in storm surge and associated wave damage are possible depending on bathymetry (water depths), beach configuration, and variations in wind speed and waves within the storm. Protecting multiple populations that represent the natural range of the subspecies, therefore, would likely increase the chance that at least one population within the range of a subspecies will survive episodic storm events and persist while vegetation and dune structure recover. This theory has been supported by population viability models conducted on the subspecies (Oli et al. 2001; Traylor-Holzer 2005a, 2005b) and careful study of the closely related Perdido Key beach mouse (where a now potentially extirpated population was the source of the two remaining populations of the subspecies (Holler et al. 1989; Service 2004b)).

While maintaining multiple populations throughout the geographic range of each beach mouse subspecies provides protection from extinction (Oli et al. 2001), conservation of a subspecies necessitates protection of genetic variability throughout its range (Ehrlich 1988). Conservation of a species over a range of habitat types where it is known to occur reduces the chance of losing disjunct populations, which represent important conservation value for their adaptation to local environmental conditions and their genetic uniqueness (Fahrig and Merriam 1994). This includes ''peripheral'' populations (populations on the fringes of the natural range of the species/subspecies), which in many cases are thought to be highly desirable because of their distinct genetic characters or adaptations due to divergent natural selection (Lesica and Allendorf 1995). Preservation of natural populations throughout the range of each subspecies is therefore crucial, as the loss of a population of beach mice can result in a permanent loss of alleles (genes) (Wooten 1999). This genetic variability, once lost, cannot be regained through translocations or other efforts.

Protection From Hurricanes

Hurricanes and tropical storms are a frequent occurrence along the Alabama coastline. Between 1899 and 2004, 15 storms of Category 1 or greater on the Saffir-Simpson Hurricane Scale have directly impacted ABM habitat (NOAA 1999; Service 2004a, 2005a). Hurricanes can impact beach mice either directly (e.g., drowning) or indirectly (e.g., loss of habitat). When Hurricane Ivan, a strong Category 3 hurricane, made landfall in Gulf Shores on September 16, 2004, it adversely impacted an estimated 90 to 95 percent of primary and secondary dune habitat throughout the range of the ABM (Service 2004a). A review of trapping data from various locations following Ivan indicated that mice may have been extirpated from these low-lying areas (Service 2004a). However, higher-elevation scrub habitat, while receiving damage from salt spray and wind (Boyd et al. 2003; Service 2004a), is often not inundated by hurricane-induced storm surge and associated battering waves. This has been observed both in recent storms (including Hurricanes Ivan and Katrina (2005)) and hurricane model runs (U.S. Army Corps of Engineers (ACOE) 2001; Service 2004a, 2004c, 2005a; ENSR Corporation (ENSR) 2004).

Following Hurricane Opal of 1995, Swilling et al. (1998) reported higher ABM densities in the scrub than the foredunes nearly one year after the storm. As vegetation began to recover, however, the primary and secondary dunes were reoccupied by ABM and population densities surpassed those in the scrub in the fall and winter following the storm. Similar movement and habitat occupation patterns were observed following Hurricane Georges in 1998. Therefore, while ABM numbers and habitat quality in the frontal dunes ebb and flow in response to tropical storms, the higher-elevation scrub habitat is important to mouse conservation as a more stable environment during and after storm events.

According to our review of estimated flood levels from hurricanes using the National Hurricane Center's Sea, Lake and Overland Surge from Hurricanes (SLOSH) model (ACOE 2001), and ABM habitat maps (Service 2003), we estimate that between 827 and 620 acres (335 and 251 hectares) of ABM habitat would not be inundated during a Category 3 to 5 storm. A recent estimate of the 100-year flood (flood event that has a 1 percent chance of occurrence each year) due to hurricane activity concluded that 895 acres (362 hectares) of ABM habitat would not be inundated (ENSR 2004). In our review of beach mouse habitat following the direct hit from Hurricane Ivan, we determined (through the review of aerial photography taken before and after the storm and delineation of the surge debris line with global positioning systems) that approximately 1,400 ac (567 ha) were not directly impacted by storm surge. Much of this area was however, moderately impacted (such as wind damage to vegetation, salt spray burning of vegetation) (Service 2004a). Following Hurricane Ivan, mice were trapped almost exclusively in scrub habitat that was not inundated by storm surge, or in immediately adjacent areas (Service 2004a; Service 2005a; Volkert 2005; Endangered Species Consulting Services 2004d). Thus, high-elevation habitat not inundated by hurricanes is essential to the conservation of the species.

Habitat Connectivity

Habitat loss and fragmentation associated with residential and commercial real estate development is the primary threat contributing to the endangered status of beach mice (Holler 1992; Humphrey 1992). Holliman (1983) estimated that 62 percent of all beach mouse habitat in Alabama had been lost to development between 1921 and 1983. More recent studies (Douglass et al. 1999; South Alabama Regional Planning Commission 2001) document continued growth. Coastal development has fragmented beach mouse habitat and created disjunct populations (for example, population at Gulf State Park). Isolation of habitats by imposing barriers to species movement is an effect of fragmentation that equates to reduction in total habitat (Noss and Csuti 1997). Furthermore, the isolation of small populations of beach mice reduces or precludes gene flow between populations and can result in the loss of genetic diversity (Mech and Hallett 2001). Selander et al. (1971) found that allozyme variation in beach mouse populations (Perdido Key beach mice, Choctawhatchee beach mice, and ABM) was significantly lower than the variation detected in adjacent inland populations. Correlations between genetic variation (heterozygosity) and other factors have been well-researched with oldfield mice. Lower levels of heterozygosity have been linked to less efficient feeding, fewer demonstrations

of social dominance and exploratory behavior, and smaller body size (Smith et al. 1975, Garten 1976, Teska et al. 1990). Research focused on inbreeding depression in oldfield mice (including one beach mouse subspecies) determined that the effects of inbreeding negatively influenced factors such as litter size, number of litters, and juvenile survivorship (Lacy et al. 1995). Demographic factors such as predation (especially by domestic cats), diseases, and competition with house mice are intensified in small, isolated populations, which may be rapidly extirpated by these pressures. Especially when coupled with events such as storms, reduced food availability, and/or reduced reproductive success, isolated populations may experience severe declines or extirpation (Caughley and Gunn 1996). The strength of influence these factors have on populations or individuals is largely dependent on the degree of isolation.

Connectivity becomes essential where mice occupy fragmented areas lacking one or more habitat types. If scrub habitat is lacking from a particular tract, adjacent or connected tracts with scrub habitat are necessary for food and burrow sites when resources are scarce in the frontal dunes, and are essential to beach mouse populations during and immediately after hurricanes. Trapping data suggest that beach mice occupying the scrub (following hurricanes) recolonize the frontal dunes once vegetation and some dune structure have recovered (Swilling et al. 1998; Sneckenberger 2001). Similarly, when frontal dune habitat is lacking from a tract and a functional pathway from scrub habitat to frontal dune habitat does not exist, beach mice may not be able to obtain the resources necessary to expand the population and reach the densities necessary to persist through the harsh summer season or the next storm. General research supports the effectiveness of biological corridors (Beier and Noss 1998) and recent population viability analysis work suggests the importance of functional pathways for ABM (Traylor-Holzer 2005). These functional pathways may allow for natural behavior such as dispersal and exploratory movements, as well as gene flow to maintain genetic variability of the population within fragmented or isolated areas. To that end, contiguous tracts or functionally connected patches of suitable habitat provide connectivity that is essential to the long-term conservation of beach mice.

Food Resources and Vegetative Cover

ABM feed primarily upon seeds and fruits but have been shown to prey on insects. They appear to forage on food items based on availability and have shown no preferences for particular seeds or fruits (Moyers 1996). Research suggests that the availability of food resources fluctuates seasonally in Gulf Coast coastal dune habitat, specifically that food resources may be limited during winter and spring in the scrub habitat and limited in the frontal dunes in the summer and fall (Sneckenberger 2001). Nutritional analysis of foods available in each habitat revealed that seeds of plant species in both habitats provide a similar range of nutritional quality. The frontal dunes appear to have more species of high-quality foods, but these sources are primarily grasses and annuals that produce large quantities of small seeds in a short period of time. Foods available in the scrub consist of larger seeds and fruits that are produced throughout a greater length of time and linger in the landscape. Consequently, large, contiguous tracts containing both frontal dune and scrub habitat types are necessary to provide both: (1) a large quantity of food resources coinciding with the reproductive season, and (2) a relatively stable source of food resources when availability is reduced.

Foraging activities and other natural behaviors of ABM are influenced by many factors. Artificial lighting alters behavior patterns, causing beach mice to avoid otherwise suitable habitat and decreases the amount of time they are active (Bird et al. 2004). The presence of vegetative cover reduces predation risk and perceived predation risk of foraging beach mice, and allows for normal movements, activity, and foraging patterns. Foraging in sites with vegetative cover is greater and more efficient than in sites without cover (Bird 2002). Beach mice have also been found to select habitat for increased percent cover of vegetation, and decreased distance between vegetated patches (Smith 2003). Behavioral modification or increased predation in response to these factors can result in population decreases and restricted use of available habitat.

Burrow Sites

ABM use burrows to avoid predators, protect young, store food, and take refuge between foraging bouts and during periods of rest and have been shown to select burrow sites based on a suite of abiotic and biotic factors. A limitation in one or more factors may result in a shortage of suitable sites and the availability of potential burrow sites in each habitat may vary seasonally. ABM tend to construct burrows in areas with greater plant cover, less soil compaction, steep slopes, and higher elevations above sea level (Lynn 2000; Sneckenberger 2001). Burrows are typically constructed in Coastal beach or St. Lucie sands (Soil Conservation Service 1964) free of obstructions or debris. These factors are likely important in minimizing energy costs of burrow construction and maintenance while maximizing the benefits of burrow use by making a safe and physiologically efficient refuge. Similar to food resources, this fluctuation in availability of burrow sites suggests that a combination of primary, secondary, and scrub dune habitat is essential to beach mice at the individual level.

Habitats Protected From Anthropogenic Disturbance

Artificial lighting, non-native species, and refuse can directly and indirectly increase predation pressure on beach mice beyond their natural levels. Free-roaming and feral pets are believed to have a devastating effect on beach mouse persistence (Bowen 1968; Linzey 1978) and are considered to be the main cause of the loss of at least one population of ABM (Holliman 1983). Cat tracks have been observed in areas of low trapping success for beach mice (Moyers et al. 1999). A VORTEX population and habitat viability analysis for the ABM indicated that if each population had as few as one feral cat that ate one mouse a day, rapid extinction occurred in over 99 percent of all iterations (Traylor-Holzer et al. 2005). Refuse has been shown to attract competitors (house mice, *Mus musculus*) and predators (such as coyote, *Canis latrans*; red fox, *Vulpes vulpes*), unsettling the natural predator/prey balance and competing with beach mice for resources. This issue is of particular importance and has the most impact when beach mouse populations are at low densities. This influx of development-related predators and competitors is believed to be the final cause of the extinction of the pallid beach mouse (*Peromyscus polionotus decoloratus*) (Humphrey 1992).

Beyond the direct effects of mortality due to predation, beach mouse habitat use and foraging patterns are influenced by these anthropogenic disturbances. Artificial lighting, for example, increases the risk of predation and influences beach mouse foraging patterns and natural movements as it increases their perceived risk of predation. Beach mice avoid areas with artificial lighting or reduce the time

spent foraging in lighted areas (Bird et al. 2004.) Consequently, because of these anthropogenic factors, mice may be unable to gather necessary food resources or fail to utilize otherwise suitable habitat.

Primary Constituent Elements for the Alabama Beach Mouse

PCEs determined for the ABM in connection with the original designation of critical habitat included dunes and interdunal areas, and associated grasses and shrubs that provide food and cover (50 FR 23872). However, these elements did not address many of the requirements that we now know are crucial for long-term persistence of beach mice, including the need for scrub dune habitat. Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain theessential life history functions of the species, we have determined that the ABM's PCEs are:

1. A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites.

2. Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators.

3. Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge.

4. Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.

5. A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat on lands that were occupied at the time of listing and contain sufficient PCEs to support life history functions essential to the conservation of the ABM. In a few instances, we are also proposing to designate areas that were identified as occupied after listing, but that we have determined to be essential to the conservation of the ABM.

An area was considered for designation where it possesses one or more of the PCEs and at least one of the following characteristics: (1) Supports a core population of beach mice; (2) was occupied by ABM at the time of listing; (3) is currently occupied by the beach mouse according to Service ABM trapping protocol (Service 2005c) and has been determined to be essential to the conservation of the species. The Service has developed a trapping protocol for establishing absence of beach mice (see **ADDRESSES** to request a copy). To document absence, this protocol requires 2 years of quarterly trapping with no beach mice captured. Presence of beach mice, however, can be documented by the capture of one beach mouse, or the observation of beach mouse tracks or beach mouse burrows by a beach mouse expert or similarly qualified biologist.

Following the strategy outlined above, we began by mapping coastal dune communities within the historic range of each subspecies of beach mouse. These areas were refined by using aerial map coverages to eliminate features such as housing developments and other areas that are unlikely to contribute to the conservation of beach mice. We then focused on areas supporting beach mice, as well as areas that contain the PCEs for the subspecies.

Because the ABM habitat is dynamic and changes in response to coastal erosion, we believe that limiting the proposed designation to areas occupied at the time of listing would not yield sufficient habitat for the persistence of beach mice. The fragmentation of the species' historic habitat, coupled with the dynamic nature of coastal dune habitat due to tropical storms, makes multiple populations essential for species conservation. Consequently, we are proposing units that were not occupied at the time of listing. These areas, however, are currently occupied by the species, have one or more of the PCEs, are within the historic range of the species, and are essential for the conservation of the ABM.

The combined extent of these mapped areas defines the habitat that contains features that are essential to the conservation of the subspecies. Although these areas proposed for designation represent only a small proportion of the subspecies' historic range, they include a significant proportion of the remaining intact coastal communities and reflect the habitat types historically occupied by beach mice. Areas not containing the PCEs, such as wetlands and maritime forests, were not included within the proposed designation. Field reconnaissance was done in a few areas for verification. We eliminated highly degraded tracts, and small, isolated, or highly fragmented tracts that provide no long-term conservation value. The remaining areas were identified as containing the PCEs and are proposed as five critical habitat units for the ABM.

We reviewed existing ABM management and conservation plans to determine if any areas identified above did not meet the definition of critical habitat according to section 3(5)(A) of the Act, or could be excluded from the revised designation in accordance with section 4(b)(2). Portions of the Perdue Unit of the Bon Secour National Wildlife Refuge (Refuge) are adequately protected under the Refuge's Comprehensive Conservation Plan (CCP) and do not require special management or protection. While these areas, which collectively total 1,063 ac (430 ha), contain the habitat features that are essential to the conservation of the subspecies, they are proposed for exclusion (see Exclusions section).

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. As discussed in further detail below (see ''Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act''), we are proposing 56 properties for exclusion that are currently protected through Habitat Conservation Plans that provide protection and habitat management for Alabama beach mice.

There are 56 properties that have been issued incidental take permits (ITPs) for ABM under section 10(a)(1)(B) within the areas that we have identified contain the features essential to the conservation of the subspecies. All of these properties possess HCPs that require the use of native plants in landscaping, control of domestic and feral cats and house mice, wildlife-friendly lighting, monitoring, and other activities beneficial to ABM. After our review of these ITPs and

HCPs, we believe the benefits of exclusion from the proposed critical habitat revision outweigh the benefits of inclusion for all 56 of these areas, covering a total of 158 ac (64 ha). We propose to designate the remaining 1,298 ac (525 ha) as ABM critical habitat.

In summary, the habitat contained within the five proposed units described below, combined with habitat within the Perdue Unit of the Refuge and in the HCP sites proposed for exclusion, constitutes our best determination of areas that contain the physical and biological features essential for the conservation of the ABM. The five units that we are proposing as critical habitat encompass approximately 1,298 ac (525 ha) of coastal dune habitat in Baldwin County, Alabama. Each of these units has been occupied by the species as recently as 2004. Although these units represent only a small proportion of the subspecies' historic range, they include a significant proportion of Alabama's best remaining coastal dune habitat, reflect the wide variety of habitat types utilized by the ABM, and are spread evenly throughout the historic range of the subspecies. The areas include all of the high-elevation habitats (as determined by review of LIDAR data, storm surge model estimates, and post-Hurricane Ivan measurements) crucial to the subspecies' survival during and after major hurricane events. Because short-term occupation of habitat varies in response to tropical storm activity, ABM presence will vary spatially and temporally throughout the proposed designation, and may be unevenly distributed at any given time.

When determining proposed critical habitat boundaries, we made every effort to avoid proposing the designation of developed areas such as buildings or houses, paved areas, gravel driveways, ponds, swimming pools, lawns, and other structures that lack PCEs for the ABM. When it has not been possible to map out these structures and the land upon which they are sited because of scale issues, they have been excluded by rule text. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or PCEs in adjacent critical habitat. It is important to note that the maps provided in this proposed rule (see ''Proposed Regulation Promulgation'' section) are for illustrative purposes. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions in the ''Proposed Regulation Promulgation'' section of this rule.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and containing the PCEs may require special management considerations or protections. We also assess whether areas determined to be occupied since the time of listing and containing PCEs require special management considerations or protections. As discussed in more detail in the unit descriptions below, we find that all of the areas we are proposing for designation may require special management considerations or protections due to threats to the subspecies and/or its habitat. Such management considerations and protections include management of non-native predators and competitors, management of non-native plants, and protection of beach mice and their habitat from threats by road construction, urban and commercial development, heavy machinery, and recreational activities.

Proposed Critical Habitat Designation

We are proposing five units as critical habitat for the ABM. The units described below constitute our best assessment, at this time, of the areas determined to be occupied by the ABM at the time of listing that contain one or more of the primary constituent elements and may require special management, and those additional areas that were not occupied at the time of listing, but were found to be essential for the conservation of ABM. These five units, as well as the areas proposed for exclusion below, represent our determination of those areas that contain the physical and biological features that are and those additional areas found to be essential to the conservation of the subspecies. These additional areas are essential for the conservation of the ABM for two main reasons. First, at the time of listing, beach mice were thought to be restricted to the frontal dune habitat and researchers did not focus on scrub habitat. Consequently, occurrence information of beach mice in scrub habitat was sparse even in the relatively recent past. However, scrub habitat is now known to be invaluable to beach mice and inclusion of this habitat in critical habitat is a main stimulus of this redesignation. Second, as the coastal dune environment changes dramatically through time, so do beach mouse populations. As dunes erode or build and habitat and food resources fluctuate in response to coastal processes such as erosion and tropical storm events, beach mouse populations respond accordingly, either through short- or long-term movements, or through local extinctions. As habitat improves in the future, densities increase or beach mice recolonize the recovering areas. Because of this aspect of their biology, and the fact that so few natural areas remain but mice currently occupy these areas, these areas containing PCEs where beach mice had not been detected at the time of listing are important to the species' persistence. We have proposed only those areas that we believe to be essential for the conservation of the ABM. For these reasons listed above, we propose areas that were not known to be occupied at the time of listing, but contain one or more of the PCEs and are essential for the conservation of the beach mice.

We are proposing five areas as critical habitat for the ABM: (1) Fort Morgan State Historic Site and adjacent lands (hereafter referred to as Fort Morgan Unit), (2) lands along the right-of-way of Fort Morgan Parkway (State Highway 180), and south of the Alabama Department of Environmental Management's Coastal Construction Control line (hereafter referred to as Little Point Clear Unit), (3) high-elevation habitat in the Gulf Highlands (multifamily) area (Gulf Highlands Unit), (4) Bureau of Land Management properties and private inholdings within the Perdue Unit of the Refuge (hereafter referred to as Pine Beach), and (5) Gulf State Park Unit. Table 1 below provides the approximate area (acres/hectares) determined to meet the definition of critical habitat for the ABM.

TABLE 1.—AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE ALABAMA BEACH MOUSE AND THE AREA PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT

Geographic area	Definitional areas (acres/hectares)	Area proposed for exclusion from final designation (acres/hectares)	Conservation plan type
The Dunes	15/6	15/6	HCP.
Bay to Breakers	3/1	3/1	HCP.
Kiva Dunes	50/20	50/20	HCP.
Plantation Palms	12/5	12/5	HCP.
The Beach Club	15/6	15/6	HCP.
Martinique on the Gulf	10/4	10/4	HCP.
Perdue Unit, Bon Secour NWR	1,063/430	1,063/430	CCP.
Gulf State Park	171/69	44/18	HCP.
49 Single Family Homes	17/7	17/7	HCP.
Total (Baldwin County)	1356/548	1229/497	

The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR THE ALABAMA BEACH MOUSE

[Area estimates reflect all land within critical habitat unit boundaries. We made efforts to remove areas without PCEs]

Critical habitat unit	Federal (acres/hectares)	State (acres/hectares)	Local and private (acres/hectares)	Total (acres/hectares)
1. Fort Morgan	44/18	337/136	44/18	424/172
2. Little Point Clear	16/6	82/33	173/71	264/106
3. Gulf Highlands	11/4	47/19	338/137	388/157
4. Pine Beach	11/5	.....	21/8	32/13
5. Gulf State Park	.....	190/77	.....	190/77
Total	82/33	656/265	576/234	1,298/525

We present brief descriptions of all units, and reasons why they have the features that are essential for the conservation of the ABM, below. Universal Transverse Mercator (UTM) coordinates and a more precise legal description of each unit are provided in the Proposed Regulation section.

Unit 1: Fort Morgan Unit

Unit 1 (Map 2) consists of 424 ac (172 ha) and encompasses ABM habitat in the Fort Morgan State Historic Site and private lands to the east. It is located at the extreme western edge of the ABM range, and consists principally of habitat that was known to be occupied at the time of listing (50 FR 23872; Holliman 1983) south of State Highway 180 (hereafter referred to as Fort Morgan Parkway in the rule text), with the exception of a single line of high scrub dunes directly north of the roadway and within the historic site boundaries. The actual Fort and associated structures and developed areas that were included in the original designation are not included in this proposed unit. The unit extends from mean high water line (MHWL) northward to the break between scrub dune habitat and either the maritime forest or developed landscape (such as grassy areas associated with Fort Morgan State Historic Site). The proposed unit is bounded to the west by Mobile Bay, and to the east by Unit 2 (western property line of the ''Bay to Breakers'' residential development) (see Unit 2 Description). Much of Unit 1 is existing critical habitat that was designated at the time of listing (50 FR 23872). We are proposing a minor expansion to incorporate scrub habitat. ABM habitat within The Dunes development is protected under an HCP: therefore, we propose to exclude from this Unit (see Exclusions section).

ABM occurrence in the proposed unit over time is well documented (Holliman 1983; 50 FR 23872; Rave and Holler 1992; Sneckenberger 2001) and mice have been captured here following Hurricane Ivan (Endangered Species Consulting Services 2004a; Service 2005a). Suspected ABM tracks have been identified following Hurricanes Katrina and Rita (2005) (Service 2005a). This unit contains the features essential to the conservation of the subspecies. Some areas of the unit contain a contiguous mix of primary and secondary dunes, interdunal swales, wetlands, and scrub dunes, whereas other areas contain high-quality primary and secondary dune habitat. While no one portion of the proposed unit contains every PCE, all five PCEs are present.

Natural areas of the Fort Morgan Historic Site are owned by the State of Alabama (Alabama State Historical Commission), but are currently managed by the Refuge according to a cooperative agreement (Service 2005d) (see ''Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act'' section for further detail on management). Threats in this unit that may require special management considerations include human-

generated refuse and degraded habitat (from activities associated with recreational use, for example).

Unit 2: Little Point Clear Unit

Unit 2 consists of 264 ac (106 ha) and includes east-west bands of ABM habitat south of the Alabama Department of Environmental Management's Coastal Construction Control Line (CCCL) (ADEM 1995) and along the southern roadway right-of-way for Fort Morgan Parkway (see Map 3). This Unit is bounded to the west by Unit 1 and extends eastward to the western edge of the Surfside Shores subdivision (western boundary of Unit 3). The CCCL varies in width but generally extends about 300 feet (91 meters) landward of MHWL. The Fort Morgan Parkway right-of-way, which is managed by the State of Alabama (Alabama Department of Conservation and Natural Resources) extends 160 feet (49 meters) south of and parallel to the roadway centerline. Proposed critical habitat does not include the road or shoulder of the Fort Morgan Parkway. In several places along the east-west extent of these units, additional parcels, either to the south of the Fort Morgan Parkway or to the north of the CCCL, which contain the PCEs (see Primary Constituent Element section) are proposed for inclusion in the revised designation.

This unit, while often being inundated during storm surge events (Service 2004a; ENSR 2004; ACOE 2001), represents the last remaining natural habitat connections between ABM populations in and around Unit 1 and Unit 3, and provides an essential link between those populations (PCE #4). Portions of this unit south of the CCCL contain PCE #2 and some sections of the right-of-way contain PCE #3. While this area was identified as being within the range of the ABM (50 FR 23872; Holliman 1983, Dawson 1983), we have no records that ABM were present at the time of listing. However, pre-hurricane Ivan trapping has verified the presence of mice south of the CCCL (Meyers 1983; 50 FR 23872; Endangered Species Consulting Services 2004b) and along the right-of-way (Sneckenberger 2001; Farris 2003). As described above, due to life history aspects of ABM, because so few natural areas remain for ABM, and because this unit is currently occupied and contains two of the PCEs, we consider this unit essential for the conservation of the subspecies. Habitat south of the CCCL consists of primary and secondary dunes, while habitat along the right-of-way consists primarily of scrub that is often temporarily disturbed by utility line maintenance. This frequent disturbance may benefit ABM by maintaining the habitat in an open condition.

This proposed unit is a mix of State, Federal, local, and private ownership. Threats south of the CCCL that may require special management include extensive recreational pressure and feral cats.

Unit 3: Gulf Highlands Unit

Unit 3 consists of 388 ac (157 ha) in the central portion of the Fort Morgan Peninsula. It includes portions of the Morgantown, Surfside Shores, and Cabana Beach subdivisions, as well as portions of the proposed Beach Club West/Gulf Highlands development, Bureau of Land Management properties, and some properties along the Fort Morgan Parkway right-of-way (see Map 4). It is bounded to the west by Unit 2. The main portion of the proposed unit generally stretches from MHWL landward to a natural border of wetlands to the north. This portion is bisected by ABM habitat associated with the Kiva Dunes, Plantation Palms, Beach Club, and Martinique developments and is proposed for exclusion because of its HCPs (see Exclusions section). The proposed unit also contains an eastward continuation of ABM habitat adjacent to the Fort Morgan Parkway. This northern portion of Unit 3 is bounded to the west by Unit 2 and to the east by wetlands on the Martinique property. Like the right-of-way corridor in Unit 2, it extends from the centerline of Fort Morgan Parkway 160 feet (49 meters) to the south. Unit 3 serves as an expansion of critical habitat Zone 2 that was designated at the time of listing (50 FR 23872), but did not include scrub habitat. This unit contains the features essential to the conservation of the subspecies; all five PCEs are present in varying amounts throughout this unit.

This proposed unit, combined with the neighboring Perdue Unit of the Refuge and several properties with conservation plans that are being proposed for exclusion (see Exclusions section), contains the largest assemblage of high-elevation habitat within the range of the ABM (ENSR 2004; ACOE 2001; Service 2004c). The largest tracts of contiguous habitat possessing a full gradient of ABM habitat (primary dunes landward to scrub dunes) are also found here. ABM occupancy is well documented both at the time of listing (Meyers 1983; Holliman 1983) and recently (Endangered Species Consulting Services, LLC and ENSR Corporation 2001; Farris 2003). Mice have been found here following Hurricane Ivan (Endangered Species Consulting Services 2004c, 2004d). Threats that may require special management include habitat degradation and fragmentation, extensive recreational pressure, post storm cleanups, artificial lighting, predation, and human-generated refuse.

Unit 4: Pine Beach

This unit (see Map 5) consists of 32 ac (13 ha), including a Bureau of Land Management property and 27 private inholdings within the Perdue Unit of the Bon Secour National Wildlife Refuge, not managed under the Refuge's draft Comprehensive Conservation Plan. The primary and secondary dunes within this unit were part of ''Zone 2'' of the original critical habitat designation. ABM are well documented from the area both recently (Rave and Holler 1992; Swilling *et al.* 1998; Service 2003) and from the time of listing (Holliman 1983; Meyers 1983). This unit, along with adjacent Refuge lands (see Exclusions section), contains the features essential to the conservation of the ABM because of its high-elevation habitat and continuity between habitat types. It contains PCEs 2, 3, and 5, and when combined with the surrounding Refuge lands, it also includes PCEs 1 and 4. Threats that may require special management considerations on this unit may include artificial lighting from residences, human-generated refuse that may attract predators, feral cats, habitat fragmentation from the design and construction of properties (and access routes) to inholdings, and primary and secondary dunefields impacted from recent storm events.

Unit 5: Gulf State Park

Unit 5 consists of 190 ac (77 ha) of ABM habitat in Gulf State Park, immediately east of the City of Gulf Shores and west of the City of Orange Beach (see Map 6). This unit retains most critical habitat designated in the 1985 listing rule (Zone 3—all primary and secondary dunes south of State Route 182) (50 FR 23872) and adds approximately 30 ac (12 ha) of scrub habitat located directly north of S.R. 182. It extends from MHWL northward to a natural boundary consisting of brackish wetlands and maritime forest. ABM habitat that is covered under the 2004 HCP is proposed for exclusion from the designation (see Exclusions section).

This unit contains a mix of scrub and primary and secondary dune habitat, and represents the last remaining sizable block of habitat on the eastern portion of the historic range of the subspecies.

Mice were documented in the Park in the late 1960s (Linzey 1970), but were

presumed extirpated by the early 1980s (Holliman 1983; Holler and Rave 1991), because of habitat isolation combined with the effects of tropical storm, predation (primarily from feral cats), and competition with house mice. However, critical habitat designated in the Park at the time of listing was referred to as occupied in our final listing rule (50 FR 23872). Therefore, we consider this area to be occupied at the time of listing. ABM were reintroduced to the park in 1998, and subsequent trapping confirmed their presence there (Sneckenberger S., Service, personal communication, 2005; Service 2003b). This proposed unit was heavily impacted by Hurricane Ivan in 2004 (Service 2004a) and Hurricane Katrina (2005) and recent trapping has not located mice (Volkert 2005). This unit contains PCEs 2 and 3 and, therefore, possesses the habitat features essential to the conservation of the subspecies.

This proposed unit is State-owned and managed by the State Parks Division of the Alabama Department of Conservation and Natural Resources. It has pressures from heavy recreational use, and ABM habitat here has been severely impacted by recent hurricanes. Threats to ABM habitat include loss of dune topography and vegetation from habitat destruction, human-generated refuse that could attract predators, feral cats, and artificial lighting. Habitat fragmentation also threatens ABM within this unit.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Courts of Appeal (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001); also see discussion on Role of Critical Habitat above) have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consulting us on actions for which formal consultation has been completed, if those actions may affect

subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the ABM or its designated critical habitat will require section 7 consultation under the Act. Activities on State, local, or private lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Alabama Beach Mouse and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for ABM jeopardy analyses that relies heavily on the importance of populations to the survival and recovery of the subspecies. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the ABM in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of a population, inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting ABM critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of critical habitat units is to support viable populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the ABM. Federal activities that, when carried out, may adversely affect critical habitat for the ABM include, but are not limited to:

(1) Actions that would significantly alter dune structure or the degree of soil compaction. Such activities could include, but are not limited to, permanent conversion of ABM habitat for residential or commercial purposes, excessive foot traffic, and the use of construction, utility, or off-road vehicles in beach mouse habitat. These activities, even if temporary, could alter burrow construction, reduce the availability of potential burrow sites, and degrade or destroy beach mouse habitat.

(2) Actions that would significantly alter the natural vegetation of the coastal dune community. Such activities could include, but are not limited to, allowing non-native species to establish in the area, landscaping with grass or other non-indigenous plants, and landscaping that yields excessive leaf litter, mulch, or other foreign materials. These activities could alter beach mouse foraging activities and degrade or destroy beach mouse habitat.

(3) Actions that would significantly alter the natural predator/prey balance of the coastal dune community. Such activities could include, but are not limited to, allowing unprotected refuse in the area and allowing or encouraging feral cat communities or the temporary release of domestic cats. These activities could alter beach mouse foraging activities and the availability of foraging resources and cause appreciable mortalities.

(4) Actions that would significantly alter natural lighting. Such activities could include, but are not limited to, allowing artificial lighting that does not comply with wildlife-friendly lighting specifications. These activities could alter beach mouse foraging activities, increase predation upon beach mice, and reduce the use of otherwise suitable beach mouse habitat.

(5) Activities that eliminate or degrade movement within and among designated critical habitat units. Actions such as bulkhead, canal, ditch, and wall construction; the permanent conversion of beach mouse habitat to residential or commercial development; changing of water elevations or flooding; the removal of vegetation; and excessive artificial lighting could effectively block east-west and/or north-south corridors among various habitat types, and isolate habitat.

We consider the five critical habitat units to be currently occupied by the subspecies, based on trapping data, our 2003 habitat map, and Service trapping protocol (Service 2005c). All of the units included in this proposed designation contain the features that are essential to the conservation of the ABM or are found to be essential for the conservation of the subspecies.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species at the time of listing on which are found those physical and biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection. Therefore, areas within the geographical area occupied by the species at the time of listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species at the time of listing that do not require special management or protection also are not, by definition, critical habitat.

There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans as well as management under Federal agencies jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In

making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

Perdue and Fort Morgan Units of the Bon Secour National Wildlife Refuge

The Refuge finalized its Comprehensive Conservation Plan in November 2005. This document details proposed conservation actions for the Refuge over a 15-year period, and outlines three objectives (implement monitoring protocol and manage beach and scrub habitat for the ABM) and two projects (standardize surveys and manage and evaluate scrub habitat for the ABM) that specifically address the subspecies. Many other objectives (e.g., predator management plan) and projects (e.g., develop biological database) would also benefit ABM. The Service has a statutory mandate to manage the refuge for the conservation of listed species, and the CCP provides a detailed implementation plan.

We believe that the CCP provides a substantial conservation benefit to the subspecies, and there are reasonable assurances that it will be implemented properly and in an effective fashion within portions of the Perdue Unit of the Refuge that contains the physical and biological features essential to the conservation of the ABM. Accordingly, we believe that these units of the Refuge do not meet the definition of critical habitat under section 3(5)(A) of the Act because a secure management plan is already in place to provide for the conservation of the ABM, and no special management or protection will be required.

The Service also either owns or manages 510 acres of coastal dune habitat, most of which is occupied by ABM, within the boundaries of the Fort Morgan State Historic Site. These lands, collectively, are referred to as the Fort Morgan Unit of the Refuge, but are within the Historic Site. Of the 510 acres, approximately 480 acres are owned by the State, but are managed by the Service through a cooperative management agreement with the Alabama Historical Commission. While the CCP outlines proposed management activities within the Fort Morgan Unit, we do not know whether the cooperative management agreement will be modified or terminated in the future, and therefore, if the conservation plan outlined within the CCP will be implemented. Areas containing the PCEs within these State-owned lands and the approximately 30 acres of Federal land imbedded within them, therefore, may require special management or protection, and are being proposed for inclusion into the critical habitat designation as part of Unit 1.

Habitat Conservation Plans (HCPs)

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. The ESA specifies that an application for an incidental take permit (ITP) must be accompanied by a habitat conservation plan and specifies the content of such a plan. The purpose of conservation plans is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species.

HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. The areas occupied by, and determined to have features essential to, ABM include 56 approved HCPs that specifically address the subspecies. These include HCPs for 6 multifamily developments, one hotel and convention center complex, and 49 single family homes (see below).

The completed HCPs and the associated ITPs issued by the Service contain management measures and protections for identified areas that protect, restore, and enhance the value of these lands as habitat for ABM. These measures include explicit standards to minimize any impacts to the ABM and its habitat. In general, HCPs are designed to ensure that the value of the conservation lands are maintained, expanded, and improved for the species that they cover.

For HCPs that have been already approved, we have provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and, in some cases, specified third parties.

A discussion of completed HCPs for areas that we identified as having the PCEs follows.

Multifamily Developments

HCPs for six multifamily developments along the Fort Morgan Peninsula were approved between 1994 and 1996. These developments include, from west to east, The Dunes, Bay to Breakers, Kiva Dunes, Plantation Palms, The Beach Club, and Martinique, all of which were issued 30-year ITPs by the Service. The HCPs covering the properties are almost identical and consist of setting aside primary and secondary dune habitat in perpetuity, and the construction of dune walkovers within protected areas to minimize pedestrian impact to habitat. These HCPs also require the use of native plants in landscaping, control of domestic and feral cats, interpretive signage, minimal outdoor lighting, live-trapping surveys, and annual reports.

HCPs for The Beach Club and Martinique developments also include the creation of endowment funds for use in future ABM conservation activities (e.g., research or habitat restoration). All of these properties have been developed as permitted or are nearing completion, and the areas within the properties that we have identified as containing the features that are essential to the conservation of the ABM consist of the acreage set aside as ABM conservation zones (see Table 1). Much of these conservation zones were designated as critical habitat at the time ABM was listed.

On the basis of the conservation benefits afforded the ABM from the referenced HCPs and the provisions of section 4(b)(2) of the Act, we propose to exclude the areas on these properties that contain the features that are essential to the conservation of the subspecies from proposed critical habitat. We have further determined that the exclusion of these areas from critical habitat would not result in the extinction of the ABM. The rationale for this determination is below (see Benefits of Exclusion).

Gulf State Park Hotel and Convention Center Complex

In 2004, we approved an HCP for the upcoming demolition and reconstruction of a new hotel and convention center complex south of S.R. 182 on Gulf State Park. This new complex will replace the current facilities (which were destroyed during Hurricane Ivan) and its construction will result in a net gain of 3 ac (1 ha) of ABM habitat due to improved siting and design of the structures and restoration work outlined in the HCP. The HCP for this complex, which covers both the construction and operation of the facilities, outlines an aggressive strategy for the control of roaming cats, house mice, and refuse; and includes wildlife-friendly lighting, native landscaping, and visitor outreach on the fragile coastal environment (including the ABM). The area covered by the HCP and ITP includes the 44 ac (18 ha) surrounding the complex.

On the basis of the conservation benefits afforded the ABM from this HCP and the provisions of section 4(b)(2) of the Act, we propose to exclude the 44 ac (18 ha) covered area, portions of which we have identified contain the features that are essential to the conservation of the subspecies, from proposed critical habitat. We have further determined that the exclusion of this area from critical habitat would not result in the extinction of the ABM. The rationale for this determination is below (see Benefits of Exclusion).

Single Family Homes

Prior to August 2004, we approved HCPs for the construction of two single family homes in the Cabana Beach subdivision. Portions of both these properties have been determined to contain the features that are essential to the conservation of the ABM. In August 2004, we approved HCPs for the construction of 17 additional single family homes in occupied ABM habitat. Ten of these properties have been determined to contain features essential to the conservation of the ABM (see CRITERIA section). In September 2005, we approved HCPs for the construction of 55 more residences within occupied ABM habitat. Thirty-seven of these properties (11 of which are located within ''The Dunes'' development) have been determined to be essential to the ABM. The HCPs and ITPs covering all of these properties while under and after construction require a small developed footprint (typically no larger than 0.1 ac (0.004 ha)) for all structures and driveways, the construction of a dune walkover for Gulf-front lots, and the conservation of the remaining ABM habitat on the property for the duration of the ITP. The HCPs also call for wildlife-friendly lighting, landscaping with native plants, control of domestic pets (such as cats), and refuse control. The associated ITPs are valid for 50 years and ITP permit conditions are transferable if property ownership changes.

On the basis of the conservation benefits afforded the ABM from the referenced HCPs and the provisions of section 4(b)(2) of the Act, we propose to exclude ABM habitat within these 49 properties that contain features essential to ABM conservation from proposed critical habitat. We have further determined that the exclusion of these areas from critical habitat would not result in the extinction of the ABM. The rationale for this determination is below (see Benefits of Exclusion).

Following is our analysis of the benefits of including lands within approved HCPs versus excluding such lands from this critical habitat designation.

(1) Benefits of Inclusion

The benefits of including approved HCPs in critical habitat are normally small. The principal benefit of any designated critical habitat is that federally funded or authorized activities that may affect it require consultation under section 7 of the Act. This consultation process ensures adequate protection against adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are typically crafted to ensure the long-term survival and conservation of covered species within the plan area. These approved HCPs, which were based upon the best available science at the time, set aside areas that contain the habitat features essential to the conservation of the subspecies, including critical habitat designated at the time of listing. Other areas within these developments no longer contain natural ABM habitat. All 56 HCPs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species. While the presence or absence of ABM on each of the sites has not been verified, the presence of ABM on many of the sites has been confirmed by field surveys. On the remainder of the sites, ABM have been documented on nearby or adjacent sites containing identical habitat. As such, we have a high degree of certainty that ABM cyclically utilize these sites. Surveys completed after the development of several of the sites indicates that ABM continue to utilize the undeveloped portions of the sites. Therefore, a clear Federal nexus remains on these sites. This includes the sites after development where we anticipate the continued usage by ABM.

Another possible benefit to including these lands in the proposed designation is public outreach and education. The designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, through the HCP development process, which typically involves extensive outreach and opportunity for public review and typically results in formal protection of essential habitat areas, the public is well informed and educated about conservation value of essential habitat lands. The importance of these HCP-covered areas to the ABM is reinforced through the publication of this proposed critical habitat revision, regardless of whether the areas are included or excluded.

(2) Benefits of Exclusion

The benefits of excluding HCPs include relieving landowners, communities and counties of the need to consult a second time to determine if

their proposed action would constitute adverse modification. A second consultation would provide little benefit for the species since a formal consultation has already been completed on the project site to determine if the project would result in jeopardy. Additional regulatory burden that might be imposed by critical habitat beyond that found in the HCP may be perceived. This benefit to exclusion is particularly compelling because we have made the determination that once an HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of the Act. Imposing an additional regulatory review after HCP completion may call into question conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us an opportunity to streamline regulatory compliance, and provides regulatory certainty for HCP participants.

Another benefit of excluding HCPs is that it would encourage the continued development of partnerships with present and future HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would otherwise be unable to accomplish. By excluding areas covered by HCPs from critical habitat designation, we clearly maintain our commitments, preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In addition, an HCP application must undergo consultation pursuant to section 7 of the Act. Several of these developments have already undergone a formal evaluation of the plan's potential to adversely modify critical habitat that was designated in 1985, and in all cases the designated critical habitat is part of the ABM conservation areas set aside under the HCP. In those areas where critical habitat had not been designated, we carefully analyzed the effects of the plan on essential habitat areas as part of our jeopardy analysis under section 7 of the Act, and as part of its evaluation of the adequacy of the plan under section 10 of the Act. Because virtually all HCPs are developed to minimize and mitigate the impacts of take (as defined in the Act) of covered species resulting from habitat loss within the plan area, a fundamental goal of these plans is to identify and protect habitat essential to the covered species while directing development to non-habitat or lower quality habitat areas. Thus, the plan's effectiveness in protecting essential habitat within the plan boundaries and management challenges within the plan boundaries will have been thoroughly addressed in the HCP. Future Federal actions that may affect listed species would continue to require consultation under the ''jeopardy standard'' of section 7 of the Act.

Further, HCPs typically provide for greater conservation benefits to a covered species than consultations pursuant to section 7 of the Act because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by consultations under section 7 of the Act that, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not afford the lands it covers the extensive benefits an HCP provides. The development and implementation of an HCP provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

In general, we believe that the benefits of critical habitat designation for the ABM on lands within the 56 approved HCPs that cover this subspecies are small while the benefits of excluding these lands from designation of critical habitat are substantial. After weighing the minor benefits of including these lands against the much greater benefits derived from exclusion, including encouraging the pursuit of additional conservation partnerships, we are excluding lands determined to contain features essential to ABM conservation within the 56 developments covered by approved and legally operative HCPs from the proposed revised critical habitat.

We believe that these HCPs and their associated ITPs adequately protect essential ABM habitat features within their boundaries and provide appropriate management to maintain and enhance the long-term value of this habitat. The education benefits of critical habitat designation have been achieved through the public outreach, and notice and comment procedures required prior to approval of these plans, and through their identification in this critical habitat revision. For these reasons we find that designation of critical habitat has little benefit in areas covered by these HCPs and that such benefits are outweighed by the benefits of maintaining proactive partnerships with plan participants and encouraging additional conservation partnerships that will result from exclusion of critical habitat in these plan areas. We also find that the exclusion of these lands from proposed critical habitat will not result in the extinction of the ABM, or hinder its recovery because their HCPs have already been evaluated under section 7 of the Act to ensure that their implementation will not jeopardize the continued existence of the subspecies.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the Alabama beach mouse is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/daphne*, or by contacting the Daphne Ecological Services Field Office directly (see **ADDRESSES** section). For further explanation, see the ''Regulatory Flexibility Act'' and ''Regulatory Planning and Review'' discussions below.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings

must be made in writing at least 15 days prior to the close of the public comment period. We intend to schedule public hearings once the draft economic analysis is available such that we can take public comment on the proposed designation and economic analysis simultaneously. However, we can schedule public hearings on this proposal prior to that time, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis will be available from the Internet Web site at *http://www.fws.gov/daphne/* or by contacting the Daphne Fish and Wildlife Field Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. U.S. *Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the ABM is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates

to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Alabama. The designation of critical habitat in areas currently occupied by the ABM imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the ABM.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands with features essential for the conservation of the ABM. Therefore, critical habitat for the subspecies has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Acting Field Supervisor, Daphne Fish and Wildlife Field Office (see **ADDRESSES** section).

Author

The primary author of this package is the Daphne Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95(a), revise the entry for ''Alabama Beach Mouse (*Peromyscus polionotus ammobates*)'' under ''MAMMALS'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(a) Mammals

* * * * *

Alabama Beach Mouse (*Peromyscus polionotus ammobates*)

(1) Critical habitat units are depicted for Baldwin County, Alabama, on the maps below.

(2) The primary constituent elements of critical habitat for the Alabama Beach Mouse are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provides foraging opportunities, cover, and burrow sites.

(ii) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators.

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge.

(iv) Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.

(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, driveways, lawns, swimming pools, and roads, and the land on which such structures are located.

Critical Habitat Map Units

(4) Data layers defining map units were created by delineating habitats that contained one or more of the PCEs defined in paragraph (2) of this section, over 2001 Baldwin County, Alabama, color photography (UTM 16, NAD 83).

(5) **Note:** Map 1 (index map) follows.

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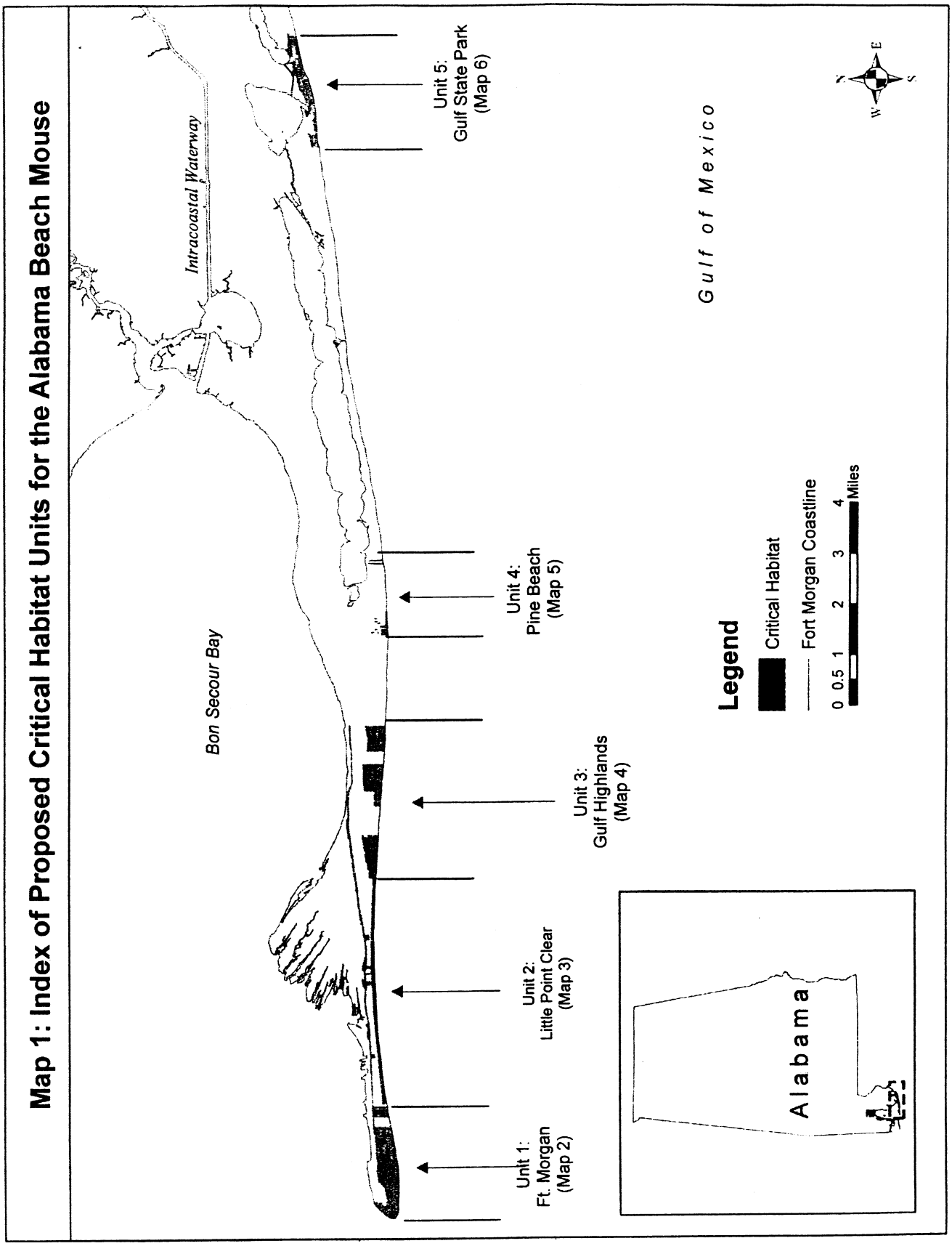

Map 1: Index of Proposed Critical Habitat Units for the Alabama Beach Mouse
Intracoastal Waterway
Bon Secour Bay
Gulf of Mexico
Unit 5: Gulf State Park (Map 6)
Unit 4: Pine Beach (Map 5)
Unit 3: Gulf Highlands (Map 4)
Unit 2: Little Point Clear (Map 3)
Unit 1: Ft. Morgan (Map 2)
Legend
Critical Habitat
Fort Morgan Coastline
0 0.5 1 2 3 4 Miles
Alabama
N
W
E
S

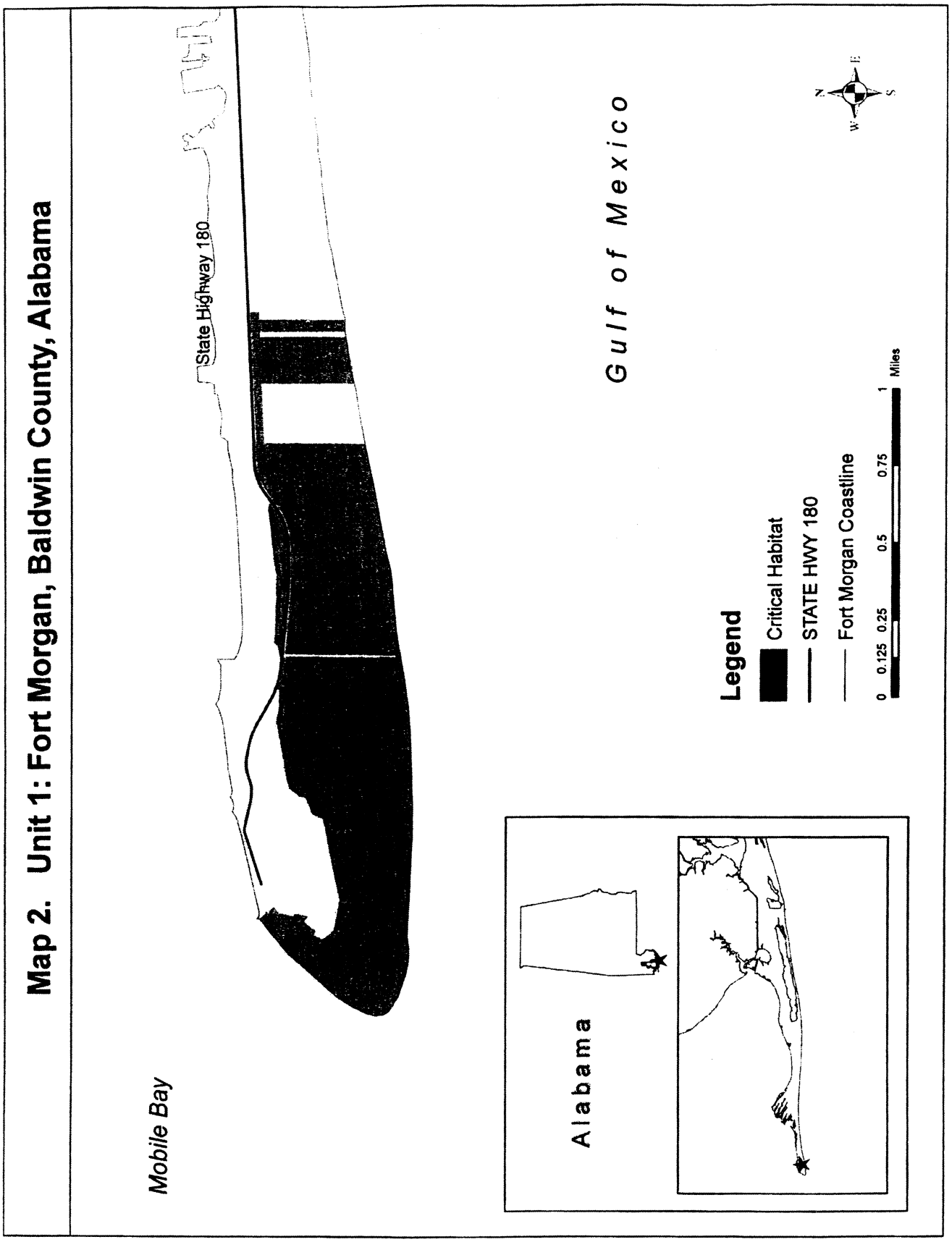
(6) Unit 1: Fort Morgan, Baldwin County, Alabama.

(i) *General Description:* Unit 1 consists of 424ac (172 ha) at the extreme western tip of the Fort Morgan Peninsula in Baldwin County, Alabama. This unit encompasses essential features of beach mouse habitat within the boundary of the Fort Morgan State Historic Site and adjacent properties west of the Bay to Breakers development. The southern and western extents are the mean high water level (MHWL). The unit extends northward to either the seaward extent of maritime forest, developed features associated with the Fort Morgan State Historic Site, or State Highway 180 (here after referred to as Fort Morgan Parkway).

(ii) *Coordinates:* From the Fort Morgan and Saint Andrews Bay USGS 1:24,000 quadrangle maps, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E,N):

401473.62, 3344763.21; 401547.57, 3344692.62; 401513.96, 3344669.09; 401503.87, 3344514.47; 401369.42, 3344440.53; 401577.82, 3344356.49; 402008.06, 3344443.89; 402169.41, 3344622.04; 402525.70, 3344682.54; 403820.62, 3344782.93; 404628.95, 3344823.00; 404623.54, 3344330.64; 404288.09, 3344287.36; 404288.09, 3344758.07; 403995.92, 3344747.25; 403995.92, 3344233.25; 403292.55, 3344087.17; 402583.77, 3343995.19; 401269.00, 3343995.19; 400971.42, 3344125.04; 400976.83, 3344206.20; 401301.47, 3344628.22

(iii) **Note:** Unit 1 (Map 2) follows.


Map 2. Unit 1: Fort Morgan, Baldwin County, Alabama
State Highway 180
Mobile Bay
Gulf of Mexico
Legend
Critical Habitat
STATE HWY 180
Fort Morgan Coastline
0 0.125 0.25 0.5 0.75 1 Miles
N
E
S
W
Alabama

(7) Unit 2: Little Point Clear, Baldwin County, Alabama.

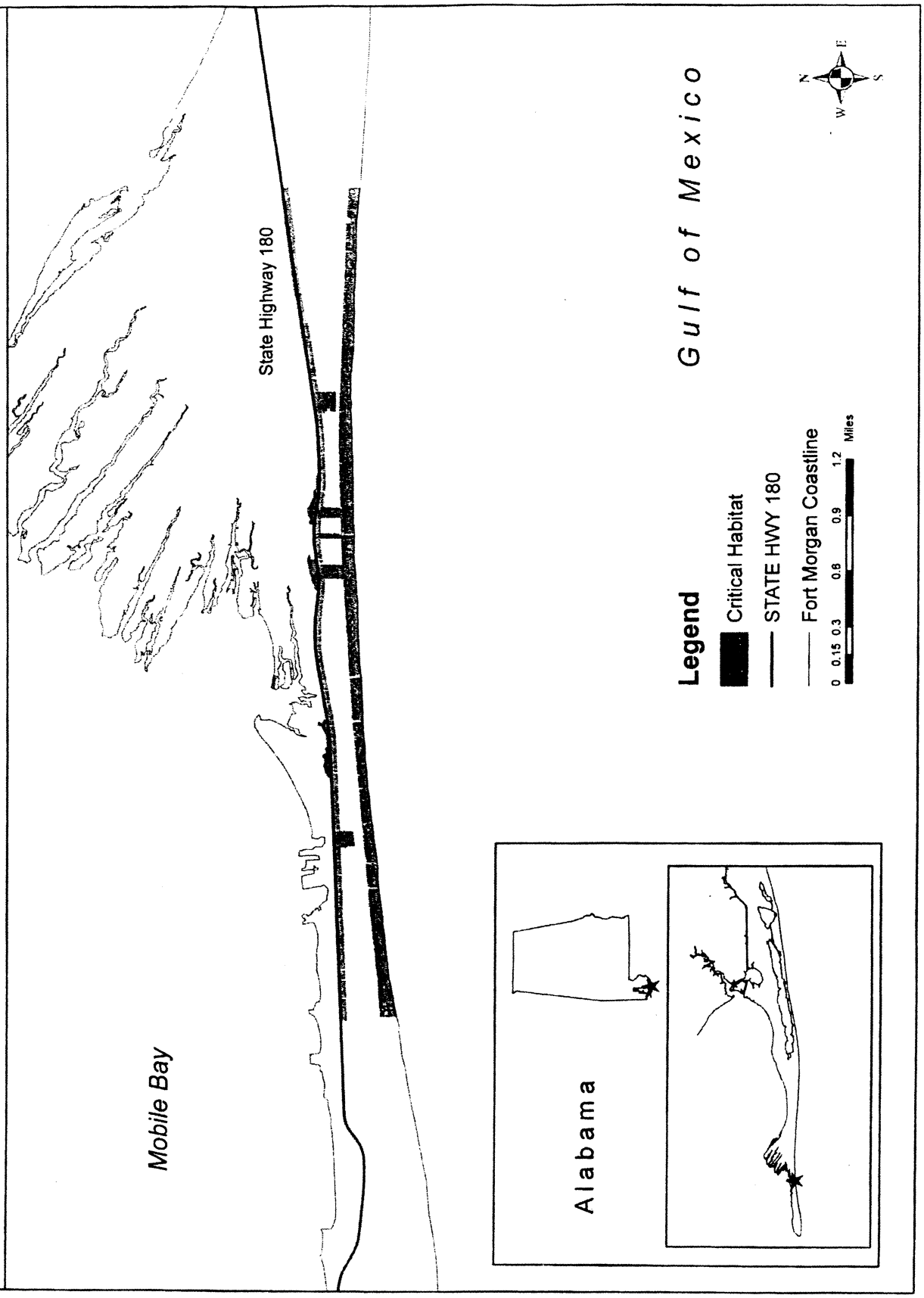
(i) *General Description:* Unit 2 consists of 264 acres (106 ha) on the Fort Morgan Peninsula in Baldwin County, Alabama. This unit encompasses essential features of Alabama beach mouse habitat north of the mean high water line (MHWL) and south of the Alabama Department of Environmental Management Coastal Construction Control Line (as defined in Alabama Administrative Code of Regulations 335–8–2–0.8) from the eastern property boundary of Bay to Breakers eastward to the western boundary of the Surfside Shores subdivision. This unit also includes essential features of Alabama beach mouse habitat 160 feet south of the centerline of Fort Morgan Parkway, from the eastern boundary of Bay to Breakers east to the western boundary of the Surfside Shores subdivision, and associated areas as depicted in Map 3 and the following coordinates.

(ii) *Coordinates:* From the Saint Andrews Bay USGS 1:24,000 quadrangle map, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E,N):

408673.97, 3345088.73; 408690.96, 3345050.98; 408964.63, 3345069.85; 408992.95, 3345115.15; 409098.64, 3345124.59; 409260.96, 3345071.74; 409306.26, 3345047.20; 409421.39, 3345039.65; 409421.39, 3345018.89; 409839.57, 3345038.68; 410450.38, 3345133.36; 410638.20, 3345180.70; 411632.04, 3345331.96; 411819.06, 3345348.96; 411819.06, 3345276.71; 411455.65, 3345227.83; 411423.77, 3345234.20; 411115.62, 3345195.95; 410735.21, 3345138.57; 410735.21, 3345117.32; 410129.52, 3345030.18; 404002.05, 3344787.64; 405929.15, 3344870.87; 406790.26, 3344915.69; 406790.26, 3344944.50; 406889.49, 3344986.11; 406915.10, 3344986.11; 406947.11, 3344973.31; 406972.72, 3344998.92; 406998.33, 3344960.50; 407039.95, 3344973.31; 407065.56, 3344950.90; 407148.55, 3344960.50; 407232.02, 3345008.52; 407238.42, 3345034.13; 407289.64, 3344954.10; 407918.85, 3345054.48; 408411.28, 3345026.14; 408414.83, 3345068.65; 408687.61, 3345125.34; 408723.04, 3345107.62; 406397.69, 3344654.51; 407290.11, 3344737.53; 408502.15, 3344816.39; 408502.15, 3344974.12; 408369.32, 3344978.29; 408074.61, 3345003.18; 407842.17, 3344994.88; 407194.65, 3344878.65; 406327.13, 3344837.15; 406318.83, 3344720.92; 406181.85, 3344716.77; 406165.25, 3344837.15; 404625.30, 3344770.73; 408639.12, 3344982.42; 408850.81, 3345011.48, 408850.81, 3344837.15; 408626.67, 3344828.84; 408904.77, 3345015.63; 409021.00, 3345003.18; 409033.45, 3344837.15; 408896.47, 3344841.30; 410127.40, 3344881.42; 409955.26, 3344885.67; 409942.50, 3345003.19; 409321.94, 3344964.94; 409122.17, 3344994.69; 409122.17, 3344839.55; 409917.00, 3344856.55; 411885.04, 3344791.03; 411876.74, 3344679.42; 411303.93, 3344704.32; 410054.54, 3344754.13; 410029.64, 3344741.68; 409992.28, 3344745.83; 409963.23, 3344758.28; 408879.87, 3344720.92; 407663.69, 3344658.66; 407157.29, 3344642.06; 406011.67, 3344509.23; 405044.53, 3344417.91; 404700.02, 3344343.20; 404712.47, 3344496.78

(iii) **Note:** Unit 2 (Map 3) follows.

Map 3. Unit 2: Little Point Clear, Baldwin County, Alabama



(8) Unit 3: Gulf Highlands, Baldwin County, Alabama.

(i) *General Description:* Unit 3 consists of 388 acres (157 ha) on the Fort Morgan Peninsula in Baldwin County, Alabama. This unit encompasses essential features of Alabama beach mouse habitat north of the mean high water line (MHWL) to the seaward extent of interdunal wetlands as depicted in Map 4 and outlined in the following coordinates. This unit also includes essential features of Alabama beach mouse habitat 160 feet south of the centerline of Fort Morgan Parkway. Unit 3 is bounded to the west by the eastern property line of the Morgantown subdivision and to the east by the western property line of Martinique on the Gulf.

(ii) *Coordinates:* From the Pine Beach and Saint Andrews Bay USGS 1:24,000 quadrangle maps, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E,N):

Surfside Shores—

411884.85, 3344677.70; 411900.69, 3344899.40; 412122.39, 3344896.76; 412230.61, 3344952.19; 412407.44, 3344970.66; 412407.44, 3344997.06; 413286.34, 3345139.58; 413283.70, 3344598.52

Gulf Highlands—

414393.00, 3344536.62; 414393.00, 3344732.11; 414676.12, 3344736.60; 414671.63, 3345057.92; 415538.97, 3345096.12; 415529.98, 3344440.00

Gulf Shores Plantation—

414204.25, 3344552.35; 414204.25, 3344725.37; 414343.57, 3344754.58; 414341.32, 3344543.36

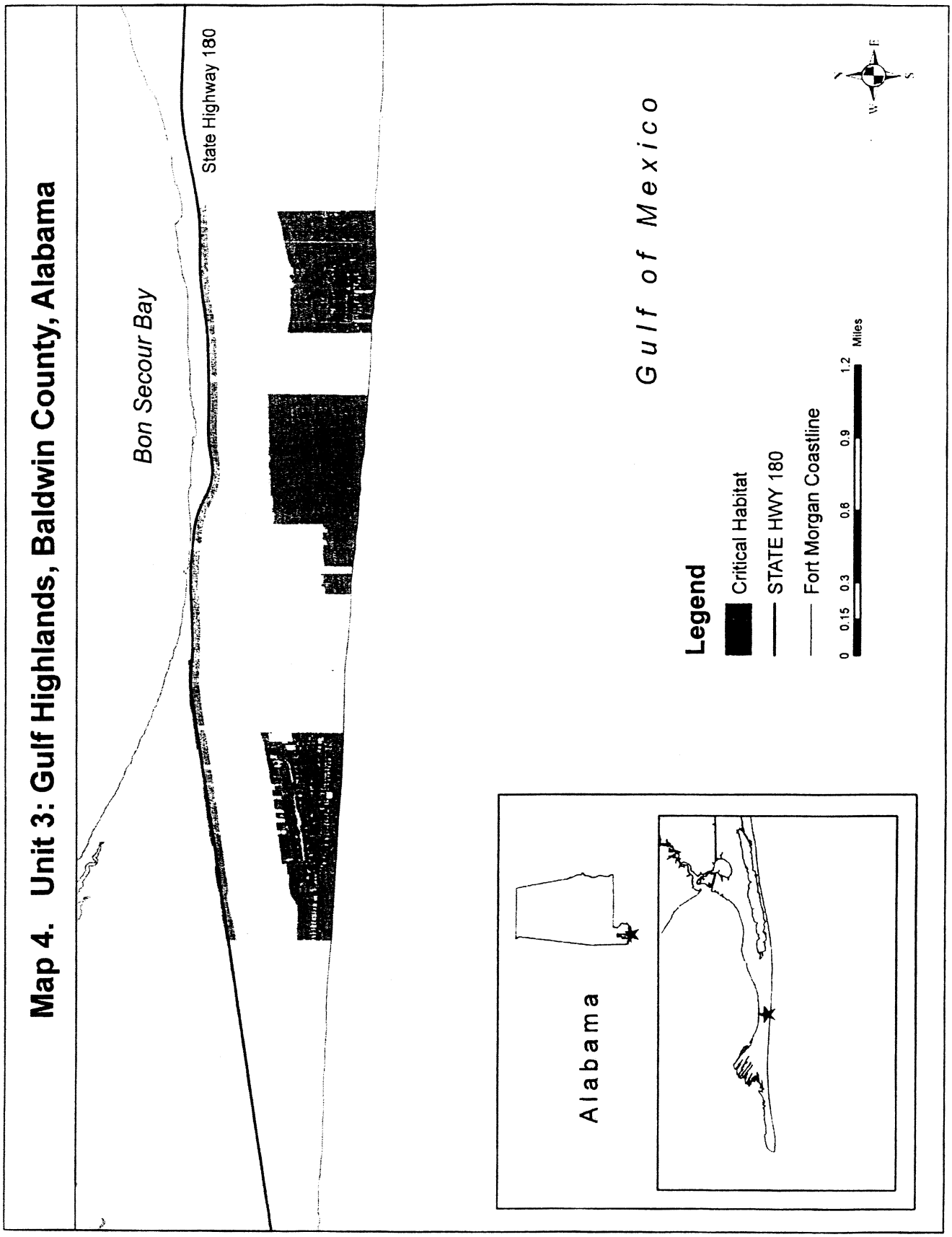
Cabana Beach—

415938.37, 3344420.63; 415938.37, 3344937.42; 416333.53, 3344954.65; 416753.99, 3345042.26; 416756.08, 3344395.60

ROW—

411829,54, 3345348.68; 413472.87, 3345602.80; 413767.66, 3345609.58; 413781.21, 3345585.86; 414496.15, 3345582.47; 414760.44, 3345545.20; 414973.90, 3345460.49; 415278.85, 3345487.60; 416762.94, 3345548.59; 416796.82, 3345490.99; 416224.19, 3345470.66; 415654.96, 3345426.61; 414973.90, 3345402.89; 414533.42, 3345521.48; 413621.96, 3345538.42; 411836.31, 3345284.30

(iii) **Note:** Unit 3 (Map 4) follows.


Map 4. Unit 3: Gulf Highlands, Baldwin County, Alabama
Bon Secour Bay
State Highway 180
Gulf of Mexico
Legend
Critical Habitat
STATE HWY 180
Fort Morgan Coastline
0 0.15 0.3 0.6 0.9 1.2 Miles
Alabama

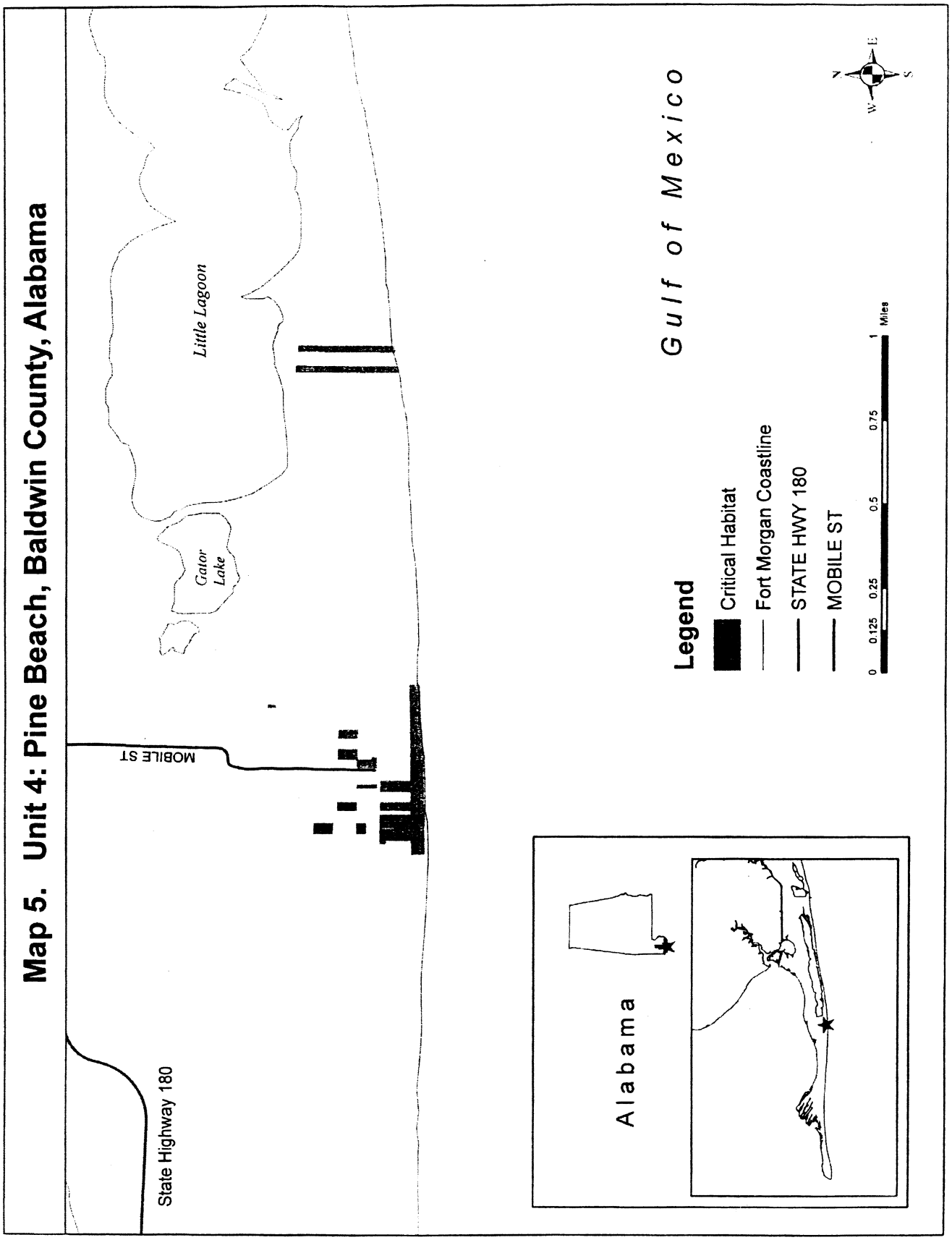
(9) Unit 4: Pine Beach, Baldwin County, Alabama.

(i) *General Description:* Unit 4 consists of 32 acres (13 ha) on 27 inholdings within the Perdue Unit of the Bon Secour National Wildlife Refuge as depicted in Map 5 and described in the following UTM coordinates.

(ii) *Coordinates:* From the Pine Beach USGS 1:24,000 quadrangle map, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E,N):

421996.98, 33444458.27; 419890.08, 3344529.29; 4199446.90, 3344526.92; 419946.90, 3344389.62; 420406.15, 3344394.35; 420401.42, 3344342.27; 419587.07, 3344320.96; 419589.44, 3344384.88; 419658.09, 3344384.88; 419655.72, 3344503.25; 419636.78, 3344503.25; 419639.15, 3344534.02; 419783.19, 3344531.65; 419783.55, 3344384.88; 419803.49, 3344384.88; 421902.28, 3344929.36; 421933.43, 3344929.36; 421930.69, 3344448.80; 421895.18, 3344446.43; 421999.34, 3344917.52; 422030.12, 3344917.52; 422030.12, 3344465.37; 419800.13, 3344730.51; 419842.74, 3344730.51; 419842.74, 3344635.81; 419797.76, 3344640.55; 419688.86, 3344841.77; 419740.94, 3344841.77; 419740.94, 3344751.81; 419688.86, 3344749.44; 419688.86, 3344645.28; 419743.31, 3344642.92; 419740.94, 3344593.20; 419688.86, 3344595.57; 420294.50, 3345060.66; 420306.84, 3345060.44; 420306.62, 3345022.12; 420294.28, 3345022.34; 420148.12, 3344725.77; 420190.73, 3344725.77; 420188.36, 3344633.45; 420150.49, 3344633.45; 420046.32, 3344728.14; 420098.40, 3344728.14; 420098.40, 3344635.81; 420046.32, 3344635.81; 420046.32, 3344567.16; 420058.16, 3344567.16; 420058.16, 3344545.86; 420003.71, 3344545.86; 420003.71, 3344638.18; 419906.65, 3344638.18; 419927.96, 3344638.18; 419927.96, 3344545.86; 419906.65, 3344548.22

(iii) **Note:** Unit 4 (Map 5) follows.


Map 5. Unit 4: Pine Beach, Baldwin County, Alabama
Little Lagoon
Gator Lake
MOBILE ST
State Highway 180
Gulf of Mexico
Legend
Critical Habitat
Fort Morgan Coastline
STATE HWY 180
MOBILE ST
0 0.125 0.25 0.5 0.75 1 Miles
N
E
S
W
Alabama

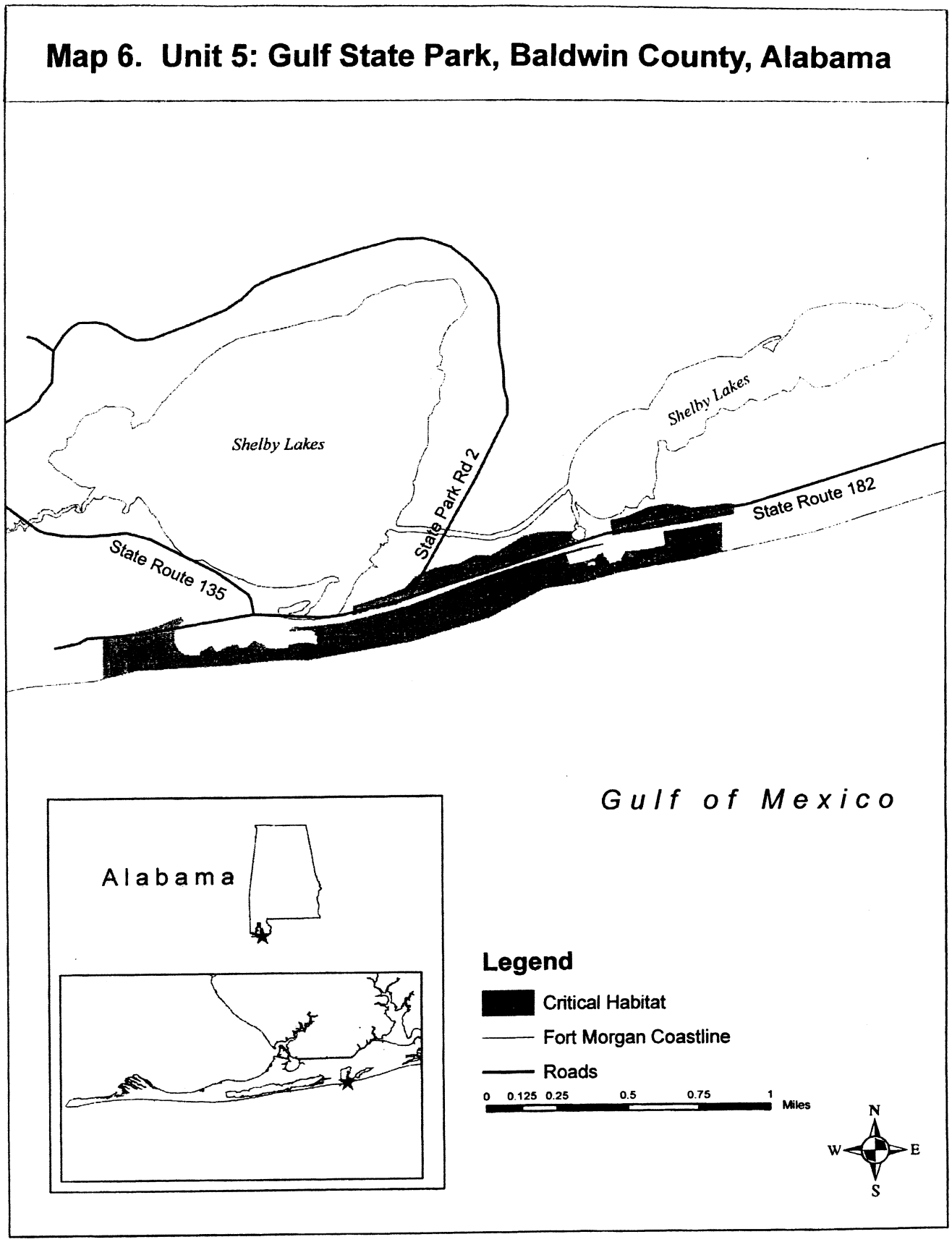
(10) Unit 5: Gulf State Park, Baldwin County, Alabama.

(i) *General Description:* Unit 5 consists of 190 ac (77 ha) in Gulf State Park east of the City of Gulf Shores in Baldwin County, Alabama. This unit encompasses essential features of Alabama beach mouse habitat north of the mean high water line (MHWL) to the seaward extent of either coastal wetlands, maritime forest, or Alabama beach mouse habitat managed under the 2004 Gulf State Park habitat conservation plan. Exact boundaries are depicted in Map 6 and displayed in the following coordinates.

(ii) *Coordinates:* From the Gulf Shores USGS 1:24,000 quadrangle map, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E,N):

438247.09, 3347462.61; 438384.26, 3347485.47; 438504.29, 3347456.89; 438738.63, 3347479.75; 438738.63, 3347411.17; 438681.48, 3347405.45; 438675.76, 3347193.97; 437681.24, 3346988.21; 436938.21, 3346702.43; 436349.50, 3346599.55; 435377.85, 3346548.11; 435160.66, 3346490.95; 435166.37, 3346736.72; 435606.47, 3346856.75; 435623.62, 3346833.89; 435572.18, 3346731.01; 435629.34, 3346645.27; 435766.51, 3346696.71; 436018.00, 3346713.86; 436360.94, 3346702.43; 436349.50, 3346765.30; 436218.05, 3346765.30; 436212.33, 3346799.60; 436572.41, 3346828.17; 436572.41, 3346913.91; 436881.06, 3347033.94; 436909.64, 3347068.23; 437612.66, 3347325.43; 437818.42, 3347319.72; 437829.85, 3347251.13; 438035.61, 3347308.29; 438041.33, 3347394.02

(iii) **Note:** Unit 5 (Map 6) follows.


Map 6. Unit 5: Gulf State Park, Baldwin County, Alabama
Shelby Lakes
Shelby Lakes
State Park Rd 2
State Route 182
State Route 135
Gulf of Mexico
Alabama
Legend
Critical Habitat
Fort Morgan Coastline
Roads
0 0.125 0.25 0.5 0.75 1 Miles
N
W
E
S

* * * * *

Dated: January 18, 2006.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–688 Filed 1–31–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
February 1, 2006

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Termination of Federal Enforcement for Parts of the Missouri Permanent Regulatory Program and Return of Full Regulatory Authority to the State of Missouri; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[Docket No. MO–738]

Termination of Federal Enforcement for Parts of the Missouri Permanent Regulatory Program and Return of Full Regulatory Authority to the State of Missouri

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing our decision under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to terminate direct Federal enforcement for those parts of the Missouri permanent regulatory program (Missouri program) for which we substituted Federal enforcement. We announced our decision to substitute Federal enforcement for parts of the Missouri program on August 22, 2003. On June 2, 2005, the Governor of Missouri petitioned us to consider returning to the Missouri Land Reclamation Commission (MLRC) the authority to enforce those parts of the Missouri program for which we substituted Federal enforcement. The Missouri Land Reclamation Program (MLRP), within the Missouri Department of Natural Resources (MDNR), implements and enforces the Missouri program for the MLRC. Based on the Missouri Governor's petition for return of the Missouri program and MLRP's completion of the required remedial actions, we are terminating Federal enforcement for those parts of the Missouri program for which we substituted Federal enforcement and returning full enforcement authority to Missouri. This document also removes those sections of the Federal regulations that address: Direct Federal enforcement for parts of the Missouri program; the remedial actions required of Missouri to regain full enforcement authority; and the requirements and procedures for terminating direct Federal enforcement.

DATES: *Effective Date:* February 1, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. OSM's Findings on Missouri's Responses to Required Remedial Actions
III. Summary and Disposition of Comments
IV. OSM's Decision
V. Procedural Determinations

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, 925.16, 925.17, 925.18, and 925.19.

On June 19, 2003, MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. In HB 6, the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Missouri Legislature only appropriated funds for bond forfeiture reclamation activities. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO–664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO–664.1). During the meeting, MLRP made a presentation describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. MLRP advised us that the moneys that were available for the regulatory program could only be used for bond forfeiture reclamation activities. Also, MLRP advised us that the State Legislature appropriated Federal funds for the abandoned mine land reclamation (AMLR) program. In addition, MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that MLRP would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were authorized by the State Legislature. MLRP indicated that it would try to gain full program funding from the Missouri Legislature for its 2005 fiscal year (FY).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri was experiencing difficult budget and revenue shortfalls (Administrative Record No. MO–664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri had adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for parts of the Missouri program. We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities (Administrative Record No. MO–664.4).

In accordance with the provisions of 30 CFR 733.12(f), we announced our decision, effective August 22, 2003, to institute direct Federal enforcement for those parts of the Missouri program that were not fully funded and staffed. We suspended the authority of Missouri to enforce all portions of the Missouri program except bond forfeiture reclamation activities. We determined that MLRP had sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. We did not provide additional grant funds to the MLRP for initiating new projects under the approved Missouri AMLR program under Title IV of SMCRA. We withheld further AMLR grant awards in accordance with 30 CFR 886.18(a)(3),

which requires us to terminate AMLR grants if an agency fails to implement, enforce, or maintain any part of an approved State regulatory program. With this substitution of Federal enforcement authority, we outlined a process, including remedial actions, by which Missouri could regain full authority for its program (68 FR 50944).

On April 15, 2004, we clarified our substitution of Federal enforcement for parts of the Missouri program and made findings on the status of the Missouri program (69 FR 19927).

On May 3, 2004, MLRP notified us that the Missouri Legislature failed to fully fund the Missouri program for the period beginning July 1, 2004, and ending June 30, 2005 (Administrative Record No. MO–664.22). In the same letter, MLRP outlined its financial and organizational plans to submit a request to its division and department legislative staff to propose funding and staffing that would be needed to reassume authority of the complete active coal regulatory program beginning July 1, 2005. On May 25, 2004, we notified MLRP that based on its May 3, 2004, submittal, we would continue the current Federal substitution plan for one more year (Administrative Record No. MO–664.24).

By letter dated May 2, 2005, MLRP notified us that the Director of the MDNR had agreed to seek full return of the regulatory program to Missouri. MLRP also requested a meeting with us to discuss the plan for the return of the program to Missouri. MLRP noted that the State budget includes the necessary funding and staffing allocations and that it plans to use remaining past coal fee funds to match the Federal regulatory grant for FY 2006 (Administrative Record No. MO–664.39).

By letter dated May 12, 2005, we advised MLRP that before Missouri can reassume full authority to implement and enforce the Missouri program, MLRP must complete the remedial measures specified in 30 CFR 925.18. In accordance with 30 CFR 925.18(c), we requested that MLRP submit a detailed description of the past coal fee funds that it proposed to use to match the Federal regulatory grant. We also requested that MLRP provide us with a Missouri Attorney General's opinion on the legality of using these funds for implementation of its permanent regulatory program (Administrative Record No. MO–664.40).

On May 26, 2005, we met with the Deputy Director of MDNR to discuss (1) funding; (2) current staff for the forfeiture program and AMLR plan; (3) cooperative agreement funding beginning July 1, 2005, and ending on December 31, 2005, or until we approve or disapprove the return of authority to Missouri; (4) procedural matters; (5) program issues; and (6) bond forfeiture site reclamation progress (Administrative Record No. MO–664.44).

By letter dated May 27, 2005, the Governor of Missouri petitioned us to consider returning to Missouri the authority to implement and enforce those parts of the Missouri program for which we substituted Federal enforcement (Administrative Record No. MO–664.42).

On June 28, 2005, the Director of MDNR submitted information on the funding and staffing plans that MLRP would use to assume full enforcement authority for the Missouri program as required by 30 CFR 925.18(c). The Director of MDNR also provided the Missouri Attorney General's written opinion on the legality of the funding proposal (Administrative Record No. MO–664.48).

Also on June 28, 2005, we awarded a cooperative agreement to MDNR for a period of six months to facilitate startup activities for MLRP, to hire and train staff, and to take other actions necessary to resume full regulatory program authority. This cooperative agreement was effective July 1, 2005. On September 15, 2005, MDNR received an amendment to its Title V cooperative agreement, which extended the cooperative agreement through June 30, 2006, or such time that we approve or disapprove Missouri's petition to assume full enforcement authority. We also awarded Missouri an FY 2005 AML Simplified Grant on June 28, 2005. The FY 2005 AML grant was initially funded for the period July 1, 2005, to June 30, 2006, to facilitate startup operations. No non-emergency project construction funds were included (Administrative Record No. MO–664.53A).

OSM and the State met face to face on nearly a monthly basis and held numerous conference calls between meetings to discuss actions required under the cooperative agreement. To date, Missouri inspectors are accompanying OSM on all inspections. Missouri staff is working with OSM on permitting requests, and the State and OSM are working on a plan to complete reclamation of the forfeiture sites. Missouri has made leadership and organizational changes as part of its implementation of the cooperative agreement (Administrative Record No. MO–664.63), and has met with coal mining operators to discuss these changes.

II. OSM's Findings on Missouri's Responses to Required Remedial Actions

A. In order for MLRP to demonstrate its intent and capability to fully implement and enforce the Missouri program as approved by the Secretary, we required MLRP to complete certain remedial actions, which we codified at 30 CFR 925.18(a) through (e). The Federal regulation at 30 CFR 925.19 provides that we will consider returning to Missouri the authority suspended under 30 CFR 925.17 provided that the State has accomplished all remedial actions specified under 30 CFR 925.18; and petitions us in writing to consider returning authority to the State. On May 27, 2005, we received a written petition from the Governor of Missouri requesting that we return, to the State, the enforcement authority that was suspended under 30 CFR 925.17 (Administrative Record No. MO–664.42). We reviewed the current status of Missouri's responses to the required remedial actions at 30 CFR 925.18, and we are making the following findings:

B. *30 CFR 925.18 State Remedial Actions.* 1. 30 CFR 925.18(a)—We required MLRP to submit to us, by August 22, 2003, a list of all outstanding enforcement actions specifying the abatement date set for each cited violation. On July 22, 2003, the Missouri Attorney General's office provided us with a copy of all outstanding enforcement actions (Administrative Record No. MO–664.13). The notices of violation and cessation orders specified the abatement date set for each cited violation. On April 15, 2004, we found that MLRP had satisfied this required remedial action, and we removed paragraph (a) from 30 CFR 925.18. See 69 FR 19932, dated April 15, 2004.

2. 30 CFR 925.18(b)—In accordance with the requirements of the approved Missouri program, MLRP was to complete administrative disposition of all enforcement actions that were initiated before August 22, 2003. As applicable, MLRP was to conduct penalty assessments, hold informal conferences and hearings, collect penalties, and terminate or vacate enforcement actions. On November 25, 2003, MLRP notified us that it had completed administrative disposition of five enforcement actions that were initiated before August 22, 2003 (Administrative Record No. MO–664.17). Additionally, on February 18, 2004, MLRP notified us that it had completed administrative disposition of the balance of its enforcement actions (Administrative Record No. MO–664.18A). Based on the above

discussion, we find that MLRP has satisfied this required remedial action, and we are removing 30 CFR 925.18(b).

3. 30 CFR 925.18(c)—Within 30 days of the date on which OSM has received and acknowledged an accurate description of available funding for the regulatory program, MLRP must submit to OSM a plan to reassume full authority for the Missouri program. At a minimum, the proposal must provide specific and adequate provisions that address funding, staffing, and adherence to the approved program. On June 28, 2005, the Director of MDNR submitted information on the funding and staffing plans that MLRP would use to assume full enforcement authority for the Missouri program as required by 30 CFR 925.18(c). The Director of MDNR also provided the Missouri Attorney General's written opinion on the legality of the funding proposal (Administrative Record No. MO–664.48). Based on the above discussion and upon our knowledge of the level of staffing and the various expertise necessary to fully implement a successful program, we find that MLRP has satisfied this required remedial action. Therefore, we are removing 30 CFR 925.18(c).

4. 30 CFR 925.18(d)—Starting on April 1, 2004, MLRP was to submit to us a report once a month on its progress in obtaining full funding for the Missouri program. MLRP is submitting monthly update reports on its progress in obtaining the funding and staffing needed to reassume its program (Administrative Record Nos. MO–644.22, MO–664.23, MO–664.26—MO.664.34, MO–664.36—MO–664.45, MO–664.50, and MO–664.54). Based on these monthly submittals, we find that MLRP has satisfied this required remedial action, and we are removing 30 CFR 925.18(d).

5. 30 CFR 925.18(e)—Effective September 8, 2003, MLRP was to take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. were made secure and to supply copies of all documents to us upon request. Beginning in July 2003, MLRP provided access to all materials that we requested (Administrative Record No. MO–664.13). MLRP also provided us with copies of all items, such as permit review documents and bond release applications, that were pending when it lost funding for the State program. On April 15, 2004, we found that MLRP had satisfied this required remedial action, and we removed paragraph (e) from 30 CFR 925.18. See 69 FR 19932, dated April 15, 2004.

III. Summary and Disposition of Comments

Public Comments

On August 22, 2005 (70 FR 48925), we announced receipt of the Governor of Missouri's petition to consider returning to Missouri the authority to enforce those parts of the Missouri program for which we substituted Federal enforcement. In that document, we opened the public comment period and provided for a public hearing. We also published notice of the public hearing in three newspapers located within the areas of active mining operations and one newspaper located in the city of the Missouri regulatory authority. We held the public hearing on September 22, 2005. The public comment period ended on September 29, 2005. The public comment period and hearing provided interested persons an opportunity to comment on matters relevant to whether OSM should grant the Governor of Missouri's petition to reassume authority for those parts of the Missouri regulatory program currently being enforced by OSM. Three persons representing two State agencies attended the public hearing and two of them registered to speak at the hearing. We received written comments from two State agencies and the Interstate Mining Compact Commission (IMCC).

1. Public Hearing Oral Comments

The first person to speak at the public hearing represented the Missouri Department of Natural Resources, Division of Environmental Quality (MDEQ) and commented that MDEQ supported OSM's action to return full enforcement authority for the Missouri program back to MLRP (MO–664.60).

The second person to speak at the public hearing represented MLRP and supported OSM's action to return full enforcement authority for the Missouri program (MO–664.60). The speaker commented on the following:

(1) The loss of funding and staffing in 2003 that prevented Missouri from operating the approved State program. Missouri and OSM entered into a cooperative agreement to fund startup of the State program in July 2005, so that Missouri could work toward assuming full responsibility for the State program. [See Section I, Background on the Missouri Program, for more information on the July 2005 cooperative agreement (Administrative Record No. MO–664.53A)];

(2) Missouri's realization that changes in its operation are appropriate. The new program will have a much smaller and different staff. It will be one set of staff that will work on coal, bond forfeiture, and abandoned mine land reclamation activities;

(3) The intent to change the Missouri regulations to phase out the regulatory process known as the bond pool and to convert to full cost bonding;

(4) The need to reclaim abandoned mine lands for future generations; and

(5) Missouri looking forward to once again implementing the full regulatory and reclamation programs.

2. Written Comments

By letters dated September 15, 2005, the Executive Director of IMCC and the Chairman of MLRC, commented that they strongly endorse and support the petition submitted by Governor Blunt to allow Missouri to reassume authority for those parts of the Missouri regulatory program that have recently been enforced by OSM. The IMCC and MLRC believe that Missouri has demonstrated its intent and capability to reassume full authority to implement and enforce its regulatory program (Administrative Record Nos. MO–664.56 and MO–664.57).

By letter dated September 19, 2005, the Director of MDEQ also commented that the MDEQ strongly endorses and supports the petition submitted by Governor Blunt to allow Missouri to reassume authority for those parts of the Missouri regulatory program that have recently been enforced by OSM. The MDEQ also believes that Missouri has demonstrated its intent and capability to reassume full authority to implement and enforce its regulatory program (Administrative Record No. MO–664.58).

3. Response to All Commenters

We agree that OSM should approve Governor Blunt's petition to allow Missouri to reassume authority for the State program. See Section IV, OSM's Decision.

IV. OSM's Decision

After a review of all available information on Missouri's actions to seek return of the Missouri program, we found that Missouri has demonstrated that it has the resources, capability, policy, procedures, and commitment necessary to assure proper implementation of the program. Therefore, we are approving the Governor of Missouri's petition to return full regulatory authority to MLRP for implementation and enforcement of the Missouri program, and we are terminating Federal enforcement of the Missouri program. This finding and decision are based on the following:

1. The Governor of Missouri submitted a petition to consider

returning authority to the State and signed legislation that appropriated the necessary funds for MLRP to implement and enforce the Missouri program.

2. MLRP provided a satisfactory source of funding for implementation and enforcement of the Missouri program.

3. MLRP provided us a staffing plan and has made good progress in hiring and training staff to implement and enforce the Missouri program.

4. Our staff has worked with the Missouri staff and management during the period beginning on July 1, 2005, and our observations and review of assignments made to Missouri indicate both staff and management are ready to assume full enforcement responsibilities.

5. MLRP accomplished to our satisfaction all required remedial actions at 30 CFR 925.18.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective February 1, 2006. Section 503(a)(3) of SMCRA requires that a State's program demonstrate that the State regulatory authority has sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Missouri is now in compliance with the requirements of section 503(a)(3).

V. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based upon the nature of the action being taken.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs must be based solely on a determination of whether the program is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that there are no Federally-recognized Indian tribes in the State of Missouri and that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory programs do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the return of regulatory authority to the State of Missouri for those portions of the Missouri permanent regulatory program for which we are currently substituting Federal enforcement 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.*). The rule is not expected to result in additional costs to the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the rule is not expected to result in additional costs to the regulated industry.

Unfunded Mandates

The return of regulatory authority to the State of Missouri for those portions of the Missouri permanent regulatory program for which we are currently substituting Federal enforcement will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the nature of the action being taken.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2006.

R.M. ''Johnnie'' Burton,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925—MISSOURI

■ 1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Part 925 is amended by removing §§ 925.17, 925.18, and 925.19 in their entirety.

[FR Doc. 06–883 Filed 1–31–06; 8:45 am]

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Federal Register

Wednesday,
February 1, 2006

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 25, et al.

High-Intensity Radiated Fields (HIRF) Protection for Aircraft Electrical and Electronic Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, and 29

[Docket No. FAA–2006–23657; Notice No. 06–02]

RIN 2120–AI06

High-Intensity Radiated Fields (HIRF) Protection for Aircraft Electrical and Electronic Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to add certification standards to protect aircraft electrical and electronic systems from high-intensity radiated fields (HIRF). This action is necessary due to the vulnerability of aircraft electrical and electronic systems and the increasing use of high-power radio frequency transmitters. The intended effect of this action is to create a safer operating environment for civil aviation by protecting aircraft and their systems from the adverse effects of HIRF.

DATES: Send your comments to reach us on or before May 2, 2006.

ADDRESSES: You may send comments, identified by Docket Number FAA–2006–23657, using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard E. Jennings, Aircraft Certification Service, Aircraft Engineering Division, AIR–130, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349. Telephone (770) 703–6090. Or, via e-mail at: *Richard.Jennings@faa.gov.*

SUPPLEMENTARY INFORMATION:

We Invite Your Comments

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Readers should note that the FAA is publishing elsewhere in today's **Federal Register** a notice of availability of a draft Advisory Circular. The Advisory Circular describes one way, but not the only way, to comply with the requirements contained in this NPRM. We also invite comments on the draft Advisory Circular. Refer to the notice of availability for instructions on how file comments on the draft Advisory Circular.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of NPRMs

You can get an electronic copy of this NPRM using the Internet by:

- Searching the DOT electronic docket Web page (*http://dms.dot.gov/search*);
- Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or
- Accessing the Government Printing Office's Web page (*http://www.gpoaccess.gov/fr/index.html*).

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267–9680. Be sure to identify the docket number of this NPRM.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701(a)(1). Under that section the FAA is charged to promote safe flight of civil aircraft in air commerce by prescribing minimum standards in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers. By prescribing standards to protect aircraft electrical and electronic systems from high-intensity radiated fields, this proposed regulation is within the scope of the Administrator's authority.

Background

Statement of the Problem

The electromagnetic HIRF environment results from the transmission of electromagnetic energy from radar, radio, television, and other ground-based, shipborne, or airborne radio frequency (RF) transmitters. This environment has the capability of adversely affecting the operation of aircraft electric and electronic systems.

Although the HIRF environment did not pose a significant threat to earlier generations of aircraft, in the late 1970s designs for civil aircraft were first proposed that included flight-critical electronic controls, electronic displays, and electronic engine controls, such as those used in military aircraft. These systems are more susceptible to the adverse effects of operation in the HIRF environment. Accidents and incidents on civil aircraft with flight-critical electrical and electronic systems have also brought attention to the need to protect these critical systems from high-intensity radiated fields.

On April 15, 1990, an Airship Industries Airship-600 traversed the beam of a highly directional RF broadcast from a Voice of America antenna and suffered a complete loss of power in both engines that resulted in a collision with trees and terrain during a forced landing in North Carolina. The National Transportation Safety Board stated in its investigation of the accident that the lack of HIRF certification standards for airships was a factor in the accident.

On March 2, 1999, a Robinson R–44 helicopter passed within 1,000 meters of the main beam of a high frequency (HF), high energy broadcast transmission antenna in Portugal. The pilot reported strong interference in the aircraft's communication systems, navigation radios, and intercom followed by illumination of the low rotor revolutions per minute (RPM) and clutch lights. He further noted that engine noise dropped to idle level and the engine and rotor RPM indicators dropped. The pilot entered autorotation and landed the helicopter successfully with damage only to the main rotor. Following landing, the pilot reported all cockpit indications were normal. The accident investigation division of Portugal's Instituto Nacional da Aviação Civil stated that the probable cause of the incident was severe electromagnetic and RF interference.

The FAA has issued three airworthiness directives (ADs) in response to HIRF effects between 1991 and 1998. In AD 91–03–05, Airship Industries Skyship Model 600 Airships, the FAA required the installation of a modified ignition control unit because of the previously described dual-engine failure that occurred when the ignition control units were exposed to HIRF.

In AD 96–21–13, LITEF GmbH Attitude and Heading System Reference (AHRS) Unit Model LCR–92, LCR–92S, and LCR–92H, the FAA stated there are indications of an unusual AHRS reaction to certain RF signals that could cause the AHRS to give misleading roll and pitch information. As a result, the FAA required either (1) the installation of a placard adjacent to each primary attitude indicator stating that flight is limited to day visual flight rules (VFR) operations only, or, if the primary attitude instruments have been deactivated, installation of a placard stating that flight is limited to VFR operations only, or (2) a modification and inspection of the AHRS wiring cables, a repetitive inspection of the cable shielding, and an insertion of a statement in the aircraft flight manual regarding unannounced heading errors that could occur after switching operation from DG to MAG or operation of the ± switch in flight with any bank angle.

In AD 98–24–05, HOAC-Austria Model DV–20 Katana Airplanes, the FAA required the replacement of engine electronic modules to prevent electromagnetic interference in the modules. The FAA required the replacement of the modules because electromagnetic interference could cause the airplane's engine to stop due to an interruption in the ignition system resulting in loss of control.

Concern for the protection of electrical and electronic systems in aircraft has increased substantially in recent years because of—

(1) A greater dependence on electrical and electronic systems performing functions required for the continued safe flight and landing of the aircraft;

(2) The reduced electromagnetic shielding afforded by some composite materials used in aircraft designs;

(3) The increase in susceptibility of electrical and electronic systems to HIRF because of increased data bus or processor operating speeds, higher density integrated circuits and cards, and greater sensitivities of electronic equipment;

(4) Expanded frequency usage, especially above 1 gigahertz (GHz);

(5) The increased severity of the HIRF environment because of an increase in the number and power of RF transmitters; and

(6) The adverse effects experienced by some aircraft when exposed to HIRF.

History

In 1987, the FAA contracted with the Department of Defense Electromagnetic Compatibility Analysis Center (ECAC) (currently the Joint Spectrum Center) to research and define the U.S. HIRF environment to be used for the certification of aircraft and the development of Technical Standard Orders. In February 1988, the FAA and the Joint Aviation Authorities (JAA) tasked the Society of Automotive Engineers (SAE) and the European Organization for Civil Aviation Equipment (EUROCAE) to develop guidance material and acceptable means of compliance (AMC) documents to support FAA and JAA efforts to develop HIRF certification requirements. In response, one SAE panel reviewed and revised the assumptions used for ECAC's definition of a HIRF environment and published several iterations of that HIRF environment for fixed-wing aircraft based on revised assumptions. Another SAE panel prepared advisory material to support the FAA's rulemaking efforts.

Because of efforts undertaken by the FAA and the JAA to harmonize the JAA's airworthiness requirements and the FAA's airworthiness regulations in the early 1990s, the FAA and the JAA agreed that the proposed HIRF certification requirements needed further international harmonization before a rule could be adopted.

As a result, the FAA established the Electromagnetic Effects Harmonization Working Group (EEHWG) under the Aviation Rulemaking Advisory Committee on Transport Airplane and Engine Issues (57 FR 58843, December 11, 1992) and tasked it to develop, in coordination with the JAA, HIRF certification requirements for aircraft.

The EEHWG expanded the existing HIRF environments developed by the ECAC with the SAE committee to include HIRF environments appropriate for aircraft certificated under parts 23, 25, 27, and 29.

In 1994, the FAA tasked the Naval Air Warfare Center Aircraft Division (NAWCAD) to conduct a HIRF electromagnetic field survey study to support the efforts of the EEHWG. The EEHWG also received HIRF electromagnetic environment data on European transmitters from European governments. The EEHWG converted the U.S. and European data into a set of harmonized HIRF environments, prepared draft advisory circular/advisory material joint (AC/AMJ), and also prepared a harmonized FAA draft HIRF NPRM and JAA draft HIRF Notice of Proposed Amendment (NPA).

In November 1997, the EEHWG adopted a set of HIRF environments agreed on by the FAA, the JAA, and the industry participants. The HIRF environments contained in these proposed rules reflect the HIRF environments adopted by the EEHWG. In addition, the information contained in this NPRM is based on the draft NPRM/NPA document.

Current Requirements

Currently, §§ 23.1309, 25.1309, 27.1309, and 29.1309 provide general certification requirements applicable to the installation of all aircraft systems and equipment, but they do not include specific certification requirements for protection against HIRF. AC 23.1309–1C, ''Equipment, Systems, and Installations in Part 23 Airplanes,'' states that § 23.1309 is not intended to include certification requirements for protection against HIRF. Because of the lack of specific HIRF certification requirements, special conditions to address HIRF have been imposed on applicants seeking issuance of a type certificate (TC), amended TC, or supplemental type certificate (STC) since 1986. Applicants have the option of demonstrating compliance using the external HIRF environment defined in HIRF special conditions or a system bench test level of 100 volts per meter (V/m), whichever is less. The FAA issued additional interim guidance for the certification of aircraft operating in HIRF environments in FAA Notice N8110.71, Guidance for the Certification of Aircraft Operating in High-Intensity Radiated Field (HIRF) Environments, dated April 2, 1998, with a cancellation date of April 2, 1999.

Development of the HIRF Environments

The HIRF environment was originally categorized into the rotorcraft severe, fixed-wing severe, certification, and normal HIRF environments. Each of these four HIRF environments was developed based on specific assumptions dealing with distance between the aircraft and transmitter, appropriate for the class of aircraft under consideration. The EEHWG investigated the likelihood that fixed wing aircraft and rotorcraft operate in the vicinity of high power transmitters. The EEHWG also investigated testing practicality and availability of test facilities for the HIRF environment levels. The EEHWG used these factors to select the levels for the HIRF environments used in the proposal.

The U.S. HIRF environments were calculated by the NAWCAD based on the assumptions agreed on by the EEHWG, using unclassified and classified data on government and civilian transmitters, such as electromagnetic effects databases, technical manuals, and information provided by transmitter operators.

In developing the U.S. rotorcraft severe, fixed-wing severe, certification, and normal HIRF environments, the NAWCAD reviewed the Joint Spectrum Center's HIRF data and updated the transmitter information to ensure the most current licensed and authorized transmitters were used. A subset of data was created that contained the licensing information and equipment descriptions on the 25 highest radiated power transmitters in each of the following 17 HIRF frequency bands for each of the HIRF environments: 10 to 100 kilohertz (kHz), 100 to 500 kHz, 500 kHz to 2 megahertz (MHz), 2 to 30 MHz, 30 to 70 MHz, 70 to 100 MHz, 100 to 200 MHz, 200 to 400 MHz, 400 to 700 MHz, 700 MHz to 1 GHz, 1 to 2 GHz, 2 to 4 GHz, 4 to 6 GHz, 6 to 8 GHz, 8 to 12 GHz, 12 to 18 GHz, and 18 to 40 GHz.

The NAWCAD then selected the five transmitters with the highest peak and the five transmitters with the highest average radiated power in each frequency band to develop the HIRF environments. The NAWCAD performed further analysis and investigation to confirm the transmitters were operating and producing the radiated power indicated in their licensing information. If one of the transmitters was located in prohibited or restricted airspace, the NAWCAD noted that information, removed the transmitter from consideration as a potential HIRF transmitter, and selected the next lower radiated power transmitter not in prohibited or restricted airspace. Once the five highest peak and five highest average power transmitters were identified and confirmed operational, the NAWCAD recalculated their electromagnetic field strengths, in V/m. Finally, the NAWCAD created each U.S. HIRF environment using the transmitters with the highest calculated field strength in each of the 17 frequency bands for peak and average power. JAA-member nations undertook similar efforts to develop the European HIRF environments.

To create the harmonized HIRF environments, the EEHWG compared the U.S. and European HIRF environments and selected the transmitters with the highest field strength values for each of the 17 frequency bands for peak and average power.

The harmonized HIRF environments are based on the individual U.S. and European HIRF environments and form an estimate of the international electromagnetic field strength, in V/m, over a frequency range from 10 kHz to 40 GHz. The FAA, JAA, and other governmental and international agencies, such as the International Civil Aviation Organization (ICAO) and the International Telecommunications Union, plan to monitor the future growth of the harmonized HIRF environment.

The following general assumptions were used to develop the HIRF environments:

(1) The HIRF environment was divided into 17 frequency bands, ranging from 10 kHz to 40 GHz.

(2) The main-beam illumination and maximum-beam gain of the transmitting antenna were used.

(3) The duty cycle of pulsed transmitters was used to calculate the average power; however, the modulation of a transmitted signal was not considered. The duty cycle was defined as the product of pulse width and pulse repetition frequency and applied only to pulsed systems.

(4) Constructive ground reflections (direct and reflected waves) of HF signals were assumed to be in phase.

(5) The noncumulative field strength was calculated; however, simultaneous illumination by more than one antenna was not considered.

(6) Near-field corrections were used for aperture and phased-array antennas.

(7) Field strengths were calculated at minimum distances dependent on the locations of the transmitter and the aircraft.

(8) The field strength was calculated for each frequency band using the maximum field strength for all

transmitters within that band for peak and average power, given in V/m. The field strength values were expressed in root-mean-square (rms) units measured during the peak of the modulation cycle, as many laboratory instruments indicate amplitude. The true peak field strength values will be higher by a factor of the square root of two.

(9) The peak field strength was based on the transmitter's maximum authorized peak power, maximum antenna gain, and system losses.

(10) The average field strength was based on the transmitter's maximum authorized peak power, maximum duty cycle, maximum antenna gain, and system losses.

(11) The aircraft's altitude and the transmitter's maximum antenna elevation were taken into account. The slant range was defined as the line-of-sight distance between the transmitter and the aircraft. The adjusted slant range was defined as the line-of-sight distance at which the aircraft encounters the maximum illumination from an elevation-limited antenna's main beam. If the transmitter's maximum antenna elevation angle was not available, 90 degrees was assumed.

(12) Transmitters located in prohibited areas, restricted areas, or warning areas (ICAO danger areas) were not included.

(13) Proposed special-use airspace (SUA) boundaries were defined for selected high-power transmitters. The size of the proposed SUA was derived from transmitter data and, therefore, varied from transmitter site to transmitter site. For transmitters located within a proposed SUA, the transmitter field strength was assessed at the boundary of the proposed SUA.

(14) Transmitters with experimental licenses and non-airport mobile tactical military transmitters were excluded.

(15) Certain transmitters have the capability to reduce power or restrict scanning coverage if aircraft operate in close vicinity. This capability was assumed to be operating for calculating illumination and power density.

(16) Transmitter losses into the antenna were estimated at 3 decibels in the U.S. HIRF environment, unless transmitter data were available.

For further information on the development of the HIRF environments, consult NAWCAD Technical Memorandum, Report No. NAWCADPAX–98–156–TM, High-intensity Radiated Field External Environments for Civil Aircraft Operating in the United States of America (Unclassified), dated November 12, 1998. A copy of the NAWCAD Technical Memorandum is available in the docket.

TABLE I.—SUMMARY OF TRANSMITTER LOCATIONS USED TO DEVELOP THE HIRF ENVIRONMENTS

Geographic location of transmitter source	Transmitter distance from aircraft (feet, slant or adjusted (adj.) slant range)			
	Rotorcraft severe	Fixed-wing severe	Certification (all aircraft)	Normal (all aircraft)
Airport [1], heliport, and offshore platform [2]:				
Fixed:				
Air route/Airport surveillance radar	300 adj. slant	500 adj. slant	500 adj. slant	500 adj. slant.
All others	100 slant	250 adj. slant	250 adj. slant	250 adj. slant.
Mobile:				
Aircraft weather radar	150 slant	150 slant	150 slant	250 slant.
All others	50 slant	50 slant	50 slant	50 slant.
Land-based (other than airport and heliport) [3]:				
HIRF SUA	Edge of SUA	Edge of SUA	Edge of SUA	Edge of SUA.
All others (distance from facility):				
> 0–3 nautical miles (nm)	100 slant	500 adj. slant	500 adj. slant	500 adj. slant.
3–5 nm	100 slant	500 adj. slant	1000 adj. slant	1000 adj. slant.
5–10 nm	100 slant	500 adj. slant	1000 adj. slant	1500 adj. slant.
10–25 nm	100 slant	500 adj. slant	1000 adj. slant	2500 adj. slant.
> 25 nm	100 slant	500 adj. slant	1000 adj. slant	1000 adj. slant.
Ship-based transmitters [4]:				
All ships	500 slant	500 adj. slant	1000 adj. slant	Not applicable.
Air-to-air [5]:				
Interceptor	Not applicable	100 slant	100 slant	Not applicable.
All others	Not applicable	500 slant	500 slant	Not applicable.

[1] The airport environment consisted of all fixed and mobile transmitters located within a 5-nm boundary around the airport. The fixed transmitters considered included the marker beacon, localizer, very-high-frequency omnirange (VOR) navigation, glide slope, tactical air navigation (TACAN), weather radar, telemetry, ground controlled approach radar, distance measuring equipment, microwave landing system (MLS), airport surveillance radar, air route surveillance radar, ultra high frequency/very high frequency (UHF/VHF) communications, and air traffic control radar beacon system (ATCRBS) interrogator. The mobile transmitters considered included all the ground transmitters not in a fixed location, such as VHF radios on ground support equipment and the following aircraft transmitters: High frequency (HF)/UHF communication, TACAN, Doppler navigation radar, radio altimeter, weather radar, and ATCRBS beacon.

[2] The heliport and offshore platform environments consisted of all transmitters, fixed and mobile, located on commercial heliport and offshore platforms. The transmitters considered included satellite, HF, and UHF/VHF communications, VOR navigation, homing beacons, weather radar, surface search radar, and MLS.

[3] The land-based environment (other than the airport and heliport environments) consisted of all ground transmitters not located on an airport, heliport, or offshore platform. The transmitters considered included sounders, submarine and UHF/VHF communication, radar astronomy, land mobile equipment, test and training equipment, weather radar, national defense radar, long-range navigation (LORAN), television broadcast, air route surveillance radar, and satellite uplinks.

[4] The ship-based environment consisted of all transmitters located on all commercial and military ships located at sea or in harbors near airports. The transmitters considered included air search radar, fire control radar, satellite, HF, and UHF/VHF communications, TACAN, weather radar, surface search radar, MLS, and ATCRBS interrogator.

[5] The air-to-air environment consisted only of those transmitters on military aircraft because the transmitters on civilian aircraft were considered in the mobile airport environment. For military aircraft on intercept courses all non-hostile transmitters were assumed to be operational, and for all military aircraft on intercept courses all transmitters were assumed to be operational.

HIRF Environments

TABLE II.—HIRF ENVIRONMENTS, AS DEVELOPED BY THE EEHWG AND AS PROPOSED IN THIS NOTICE

HIRF Environment, as developed by the EEHWG	HIRF Environment, as proposed in this notice
Fixed-wing Severe	Not used.
Rotorcraft Severe	HIRF Environment III.
Certification	HIRF Environment I.
Normal	HIRF Environment II.

The fixed-wing severe and rotorcraft severe HIRF environments present worst-case estimates of the electromagnetic field strength in the airspace in which fixed-wing aircraft and rotorcraft operations, respectively, are permitted. The fixed-wing severe HIRF environment, as shown in table III, was used only to develop the certification HIRF environment. The rotorcraft severe HIRF environment, as shown in table IV, is identical to HIRF environment III as proposed in this notice.

The certification HIRF environment, as shown in table V (HIRF environment I as proposed in this notice) provides test and analysis levels to demonstrate that an aircraft and its systems meet HIRF certification requirements. HIRF environment I is based on likely aircraft separation distances and takes into account high peak power microwave transmitters that typically do not operate continuously at their maximum output levels. Based on statistical analysis of aircraft operations, the EEHWG determined that the assumptions used for calculating HIRF environment I were more appropriate for aircraft certification than the assumptions of the fixed-wing severe HIRF environment; therefore, the fixed-wing severe HIRF environment is not used in the proposed rules.

The normal HIRF environment, as shown in table VI (HIRF environment II as proposed in this notice) also provides test and analysis levels to demonstrate that the aircraft and its systems meet HIRF certification requirements. HIRF environment II is an estimate of the electromagnetic field strength in the airspace above an airport or heliport in which routine departure and arrival operations take place. HIRF environment II also takes into account high peak power microwave transmitters that typically do not operate continuously at their maximum output levels. The EEHWG determined that the assumptions used for HIRF environment II are most appropriate for aircraft operating in the vicinity of airports.

TABLE III.—FIXED-WING SEVERE HIRF ENVIRONMENT

Frequency	Field strength (V/m)	
	Peak	Average
10 kHz–100 kHz	50	50
100kHz–500 kHz	60	60
500kHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	90	30
200 MHz–400 MHz	70	70
400 MHz–700 MHz	730	80
700 MHz–1 GHz	1,400	240
1 GHz–2 GHz	3,300	160
2 GHz–4 GHz	4,500	490
4 GHz–6 GHz	7,200	300
6 GHz–8 GHz	1,100	170
8 GHz–12 GHz	2,600	330
12 GHz–18 GHz	2,000	330
18 GHz–40 GHz	1,000	420

TABLE IV.—ROTORCRAFT SEVERE HIRF ENVIRONMENT

[HIRF Environment III]

Frequency	Field strength (V/m)	
	Peak	Average
10 kHz–100 kHz	150	150
100 kHz–400 MHz	200	200
400 MHz–700 MHz	730	200
700 MHz–1 GHz	1,400	240
1 GHz–2 GHz	5,000	250
2 GHz–4 GHz	6,000	490
4 GHz–6 GHz	7,200	400
6 GHz–8 GHz	1,100	170
8 GHz–12 GHz	5,000	330
12 GHz–18 GHz	2,000	330
18 GHz–40 GHz	1,000	420

TABLE V.—CERTIFICATION HIRF ENVIRONMENT

[HIRF Environment I]

Frequency	Field strength (V/m)	
	Peak	Average
10 MHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 GHz	700	50
700 GHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

TABLE VI.—NORMAL HIRF ENVIRONMENT

[HIRF Environment II]

Frequency	Field strength (V/m)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

Equipment Test Levels

The EEHWG developed four equipment HIRF test levels, which have been included in this proposal. The four test levels were created using typical aircraft HIRF protection characteristics and data from aircraft service experience to provide the ability to perform testing in a laboratory environment.

Equipment HIRF test levels 1 and 2 are based on the normal HIRF environment reduced by typical aircraft attenuation. The typical aircraft attenuation was determined using the mean attenuation measured on a number of transport airplanes, small airplanes, and rotorcraft. Equipment HIRF test level 3 is based on the normal HIRF environment reduced by the aircraft attenuation for a specific aircraft. Equipment HIRF test level 4 was developed to provide assurance for HIRF protection based on service experience for certain aircraft systems. To develop test level 4, the EEHWG reviewed all available reports of HIRF interference. This equipment HIRF test level was selected to minimize the effects of HIRF and is 5 to 10 times higher than the system test levels currently used.

General Discussion of the Proposal

HIRF Certification Requirements

The proposed HIRF certification requirements would apply to an applicant for a new type certificate and to an applicant for a change to an existing type certificate when the certification basis for the aircraft includes the proposed requirements. The applicability of the proposed requirements to an applicant for a change to an existing type certificate would be governed by the provisions

contained in current § 21.101 *Designation of applicable regulations* (generally referred to as the ''changed product rule''). Specifically, § 21.101 would apply when an applicant intends to change a type certificate to obtain approval for the installation of an electrical or electronic system on an existing aircraft model. Accordingly, an electrical or electronic system that has previously met HIRF special conditions may require additional testing for it to be found in compliance with the HIRF environments specified in this proposal. The FAA specifically invites comments that discuss the effect (including any potential costs) of § 21.101 on the ability of applicants to comply with the proposed HIRF certification requirements.

The hazard assessment conducted to show compliance with §§ 23.1309, 25.1309, 27.1309, and 29.1309 then could be used to assist in determining the appropriate HIRF certification requirements for the aircraft electrical and electronic systems. HIRF certification requirements in the proposed rule would be established only for aircraft electrical and electronic systems whose failure would: (1) Prevent the continued safe flight and landing of the aircraft; (2) significantly reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition; or (3) reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition. This resulting failure classification would determine which HIRF environment the aircraft and/or electrical and electronic systems would be exposed to during certification testing.

Under the proposed rule, electrical and electronic systems that perform a function whose failure would prevent the continued safe flight and landing of the aircraft must be designed and installed so that—

(1) Each function is not affected adversely during and after the aircraft is exposed to HIRF environment I;

(2) Each electrical and electronic system automatically recovers normal operation, in a timely manner, after the aircraft is exposed to HIRF environment I, unless this conflicts with other operational or functional requirements of that system; and

(3) Each electrical and electronic system is not adversely affected during and after the aircraft is exposed to HIRF environment II.

An example of an electrical or electronic system whose failure would prevent the continued safe flight and landing of the aircraft is a full authority digital electronic engine control (FADEC).

In addition, rotorcraft would be required to meet additional HIRF certification standards because rotorcraft operating under VFR do not have to comply with the same minimum safe altitude restrictions for airplanes in § 91.119 and, therefore, may operate closer to transmitters. Accordingly, for functions required during operation under VFR whose failure would prevent the continued safe flight and landing of the rotorcraft, the electrical and electronic systems that perform such a function, considered separately and in relation to other systems, would be required to be designed and installed so that each function is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment III. Rotorcraft operating under instrument flight rules (IFR) have to comply with more restrictive altitude limitations and, therefore, electrical and electronic systems with functions required for IFR operations would be required to not be adversely affected when the rotorcraft is only exposed to HIRF environment I.

The proposal would mandate that each electrical and electronic system that performs a function whose failure would reduce significantly the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition be designed and installed so the system is not affected adversely when the equipment providing these functions is exposed to equipment HIRF test level 1, 2, or 3. A system that is not adversely affected by any one of these test levels would be considered acceptable. Test levels 1 and 2 have equivalent energy, but provide different modulation applications. This flexibility permits test laboratories to use existing test equipment. Test level 2 allows an applicant to use equipment test levels developed for the specific aircraft being certificated. Any one of these test levels may be used to demonstrate HIRF protection. Examples of electrical and electronic systems whose failure would significantly reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition are an instrument landing system (ILS) receiver or a VHF communications receiver.

Lastly, under the proposed rule, each electrical and electronic system that performs a function whose failure would reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not affected adversely when the equipment providing these functions is exposed to equipment HIRF test level 4. An example of an electrical or electronic system whose failure would reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition is a cabin pressurization system.

HIRF environments I, II, and III, and equipment HIRF test levels 1, 2, 3, and 4 would be found in proposed appendixes to the affected parts.

Compliance With HIRF Certification Requirements

Acceptable operation of a system or equipment installation during exposure to a HIRF environment or equipment HIRF test level could be shown through similarity with existing systems, analyses, testing, or any combination acceptable to the FAA. However, certification by similarity could not be used for a combination of new aircraft design and new equipment design. In addition, service experience alone would not be acceptable because such experience may not include exposure to HIRF environments. Acceptable system performance could be attained by demonstrating that the system under consideration continued to perform its intended function. Deviations from the performance specifications of systems under consideration could be acceptable, but they would need to be assessed independently to ensure the effects of the deviations neither cause nor contribute to conditions that would affect adversely aircraft operational capabilities. When deviations in performance occur as a consequence of the system's or equipment's exposure to the HIRF environment or equipment HIRF test level, an assessment of the acceptability of the performance should be made. This assessment should be supported by data and analyses.

Because aircraft control system failures and malfunctions could contribute more directly and abruptly to the continued safe flight and landing of an aircraft than display system failures and malfunctions, compliance with the proposed rule for systems performing display functions would not require aircraft level testing. Therefore, systems performing display functions could demonstrate compliance with the appropriate HIRF certification requirements in a laboratory using generic HIRF attenuation curves for that aircraft developed during previous HIRF aircraft level testing. The compliance should address instructions for continued airworthiness of the HIRF protection features.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandate Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this NPRM. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposal: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) is consistent with the Trade Agreements Act of 1979 in that it appropriately adopts international standards as the basis of U.S. standards; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Who Is Affected By This Rulemaking

Manufacturers of transport category airplanes incur no incremental costs; manufacturers of transport category rotorcraft and non-transport category aircraft incur varying costs.

Occupants in affected aircraft receive safety benefits.

Assumptions and Standard Values

- Discount rate: 7%.
- Period of analysis: Costs—based on a 10-year production period. Benefits—based on 25-year operating lives of newly-certificated aircraft.
- Value of statistical fatality avoided: $3 million.
- Benefits/costs are evaluated from two perspectives: (1) The ''base case''—a comparison of the costs and associated benefits of current industry practice to those of the proposed rule, and (2) the ''regulatory case''—a comparison of the costs and associated benefits of complying with current U.S. special conditions to those of the proposed rule. Current industry practice for manufacturers of all airplanes certificated under part 25, for manufacturers of the majority of parts 23/29 aircraft, and for manufacturers of a sizeable minority of part 27 rotorcraft, is to comply with JAA's (now EASA's) HIRF interim standards (JAA's version of special conditions), which are equivalent to those of the NPRM. On the other hand, manufacturers of the remaining aircraft (some part 23 and part 29 aircraft and most part 27 rotorcraft) currently meet only U.S. special conditions, which are not as stringent as those set forth in the NPRM. These affected aircraft manufacturers would experience additional costs under the proposed rule.
- The proposed rule is assumed to be 100 percent effective in preventing HIRF-related accidents.

Alternatives Considered

Although earlier and current special condition levels of HIRF protection were considered, JAA's HIRF standards were selected for this NPRM because of both the proven high levels of protection demonstrated and the potential cost savings resulting from harmonization of FAA and JAA/EASA requirements.

Costs and Benefits of This Rulemaking

Costs

ESTIMATED DISCOUNTED COSTS

[$millions over a 10-year period]

	Current practice to NPRM	Special conditions to NPRM
Part 23 certificated airplanes	21.8	72.8
Part 25 certificated airplanes	0	308.1
Part 27 certificated rotorcraft	1.5	2.0
Part 29 certificated rotorcraft	5.3	26.6
Total estimated costs	$28.6	$409.5

In the first column (or, the base case, which reflects actual costs to industry), there are no additional HIRF-protection costs for manufacturers of part 25 airplanes and relatively low incremental costs for manufacturers of the majority of parts 23 and 29 aircraft, since U.S. manufacturers of these compliant aircraft currently meet JAA's/EASA's HIRF standards in order to market their aircraft in Europe. There are moderate incremental costs for manufacturers of the remaining portion of parts 23/29 aircraft and relatively lower costs for the majority of part 27 rotorcraft that do not currently meet JAA's/EASA's HIRF standards (equivalent to the requirements in this proposal) either

because (1) their aircraft do not yet have complex electronic systems installed or (2) they have chosen not to market their aircraft abroad. This ''current practice to proposed rule'' is the base perspective in this analysis. The total estimated ten-year costs of $28.6 million (the sum of column one) represent the true incremental impact on the industry.

However, most manufacturers of parts 23, 25, 27, and 29 aircraft believe that U.S. special conditions afford sufficient protection from HIRF. Therefore, in the second column (or, the regulatory case, ''special conditions to NPRM''), the FAA shows the incremental compliance costs between the current U.S. special condition levels (essentially equivalent to industry's self-determined protection) and the NPRM's more stringent requirements. These regulatory costs equal $409.5 million, and represent the costs for more robust HIRF protection that industry would not have voluntarily incurred.

Benefits

Estimated benefits of this proposal are the accidents, incidents, and fatalities avoided as a result of increased protection from HIRF-effects provided to electric and electronic systems. Quantified benefits are partly based on a study titled ''High-Intensity Radiated Fields (HIRF) Risk Analysis,'' by EMA Electro Magnetic Applications, Inc. of Denver, Co. (report DOT/FAA/AR–99/50, July 1999); the complete study is available in the docket for this rulemaking. Using the study's risk analysis results for airplanes certificated under parts 23 and 25 and FAA accident/incident data for rotorcraft certificated under parts 27 and 29, the FAA calculated the difference between the expected number of accidents under the proposed standards versus those that could be expected if current U.S. special condition levels were maintained in the future in lieu of the proposed standards.

ESTIMATED DISCOUNTED BENEFITS

[$millions over a 34-year period]

	Current practice to NPRM	Special conditions to NPRM
Part 23 certificated airplanes	37.1	123.5
Part 25 certificated airplanes	0	3,683.9
Part 27 certificated rotorcraft	33.3	44.4
Part 29 certificated rotorcraft	17.7	88.6
Total estimated benefits	$88.1	$3,940.4

Following FAA's rationale as stated in the cost section earlier, column one (the base case) in the benefits table above shows incremental benefits of $88.1 million resulting from averted accidents in future compliant parts 23/27/29 aircraft; part 25 airplanes already meet similar JAA standards, hence no additional benefits attributable to part 25 airplanes accrue to society. Column two in the table presents the regulatory case; it shows the additional benefits associated with going from industry's self-determined protection standards (or current special conditions) to the NPRM's HIRF standards. Total regulatory incremental benefits equal $3,940.4 million and represent the value of avoiding the following numbers of accidents over the 34-year analysis period: (1) Part 23 airplanes, 24 accidents; (2) part 25 airplanes, 22 accidents; (3) part 27 rotorcraft, 41 accidents, and (4) part 29 rotorcraft, 14 accidents. The FAA believes that, based on the aforementioned risk assessment (by EMA Electro Magnetic Applications, Inc.), this would be the potential result absent the proposed standards if all airplanes certificated under part 25, the majority of aircraft certificated under parts 23 and 29, and a sizeable minority of part 27 rotorcraft, currently or in the future did not meet the JAA/EASA HIRF requirements (i.e., equivalent to those in the NPRM).

Summary of Costs and Benefits

The incremental costs of meeting the NPRM requirements versus current industry practice equal $28.6 million and the associated benefits are $88.1 million, for a benefit-to-cost ratio of 3.1 to 1. Alternatively, the incremental costs of meeting the NPRM requirements versus current U.S. special conditions equal $409.5 million and the benefits are $3,940.4 million, for a benefit-to-cost ratio of 9.6 to 1. From either perspective, the proposed rule is clearly cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rulemaking action will have a significant economic impact on a substantial number of small entities. If an agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule would affect manufacturers of parts 23, 25, 27, and 29 aircraft produced under future new type-certificates. For manufacturers, a small entity is one with 1,500 or fewer employees. None of the part 25 or part 29 manufacturers has 1,500 or fewer employees; consequently, none is considered a small entity. There are, however, currently about four part 27 (utility rotorcraft) and ten part 23 (small non-transport category airplanes) manufacturers, who have fewer than 1,500 employees and are considered small entities.

With respect to the part 27 entities, the incremental costs of this NPRM are estimated at $875 per new-production rotorcraft. Part 27 rotorcraft at the small

end generally sell for about $200,000; thus the incremental cost would represent only a fraction of one percent of each unit's sales price and clearly less than one percent of the typical small manufacturer's annual revenues. Consequently, the FAA does not consider the incremental cost to constitute a significant economic impact. Further, most utility rotorcraft are engaged in specialized activities such as logging, offshore oil drilling, construction, etc., the demand for which is highly price-inelastic; the manufacturers can readily pass on the relatively low incremental costs to purchasers of these highly-specialized rotorcraft.

The FAA contacted the ten part 23 small airframe manufacturers actively producing airplanes. The majority of these manufacture piston-engine airplanes, most of which do not include sophisticated electrical systems. Six of the ten companies are in the initial stages of developing new airplane models that will include full-authority-digital-engine-controls (FADEC). About one-half of these, however, could not yet estimate new development costs. One manufacturer, sufficiently into the pre-certification process, did provide estimates of incremental costs related to the FADECs (costs were based on data received from the engine supplier). Additional non-recurring design/testing costs for engines in the new model would total $170,000 (recurring costs were not specified and thus assumed not significant). Annualizing the cost at 7% over a 10-year production period equals $24,200. The company expects to produce 100 airplanes annually, each selling for $130,000; expected annual sales revenue therefore equals $13,000,000. Thus, the $24,200 total annual incremental cost attributable to HIRF represents less than two-tenths of one percent of annual sales ($24,200/$13,000,000), which the FAA believes does not constitute a significant economic impact.

Two other small airframe manufacturers were contacted for similar cost data. When the FAA determined that the engine supplier in both cases was the same company referred to in the previous paragraph, that supplier was queried in order to save time. The incremental costs associated with HIRF-testing were similar, but less, than those estimated in the first case described, i.e., ranging from $120,000 to $140,000 per type certification. Annualizing the upper-end estimate of $140,000 at 7% over a 10-year production run equates to about $20,000. At a selling price of $130,000 per airplane (see first example above) and sales of 100 units annually, the $20,000 total annual incremental cost attributable to HIRF is between one-tenth/two-tenths of one percent of annual sales ($20,000/$13,000,000), which does not constitute a significant economic impact.

Based on there being no small manufacturers of part 25 or part 29 aircraft, and based on the described expense/revenue relationships for the part 23 and part 27 small manufacturers, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA invites comments on the estimated small entity impact from interested and affected parties.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule for aircraft produced under the affected parts. This rulemaking is consistent with the Trade Agreements Act in that it adopts international standards as the basis of U.S. standards.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 308(c)(1) and involves no extraordinary circumstances.

Executive Order 13132, Federalism

The FAA has analyzed this NPRM under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action would not have a substantial direct affect 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, and therefore would not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Certification, Safety.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Certification, Safety.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Certification, Rotorcraft, Safety.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Certification, Rotorcraft, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 23, 25, 27, and 29 of Title 14, Code of Federal Regulations (14 CFR) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Add § 23.1308 to subpart F to read as follows:

§ 23.1308 High-intensity Radiated Fields (HIRF) Protection.

(a) Each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the airplane must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to HIRF environment I, as described in appendix J to this part;

(2) The system automatically recovers normal operation, in a timely manner, after the airplane is exposed to HIRF environment I, as described in appendix J to this part, unless the system's recovery conflicts with other operational or functional requirements of the system; and

(3) The system is not adversely affected during and after the time the airplane is exposed to HIRF environment II, as described in appendix J to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing the function is exposed to equipment HIRF test level 1, 2, or 3, as described in appendix J to this part.

(c) Each electrical and electronic system that performs a function whose failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing the function is exposed to equipment HIRF test level 4, as described in appendix J to this part.

3. Add appendix J to part 23 to read as follows:

Appendix J to Part 23—HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 23.1308. The field strength values for the HIRF environments and equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

(b) HIRF environment II is specified in the following table:

TABLE II.—HIRF ENVIRONMENT II

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

(c) *Equipment HIRF Test Level 1.* (1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibels (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak, with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 0.1 percent duty cycle with 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(5) From 400 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 28 V/m peak with 1 kHz square wave modulation with 90 percent depth or greater. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(d) *Equipment HIRF Test Level 2.* (1) From 10 kHz to 400 MHz, use conducted susceptibility tests with CW and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 V/m peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(e) *Equipment HIRF Test Level 3.* Test level 3 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(f) *Equipment HIRF Test Level 4.* (1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting

at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

4. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

5. Add § 25.1317 to subpart F to read as follows:

§ 25.1317 High-intensity Radiated Fields (HIRF) Protection.

(a) Each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the airplane must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to HIRF environment I, as described in appendix K to this part;

(2) The system automatically recovers normal operation, in a timely manner, after the airplane is exposed to HIRF environment I, as described in appendix K to this part, unless the system's recovery conflicts with other operational or functional requirements of the system; and

(3) The system is not adversely affected during and after the time the airplane is exposed to HIRF environment II, as described in appendix K to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 1, 2, or 3, as described in appendix K to this part.

(c) Each electrical and electronic system that performs a function whose failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing the function is exposed to equipment HIRF test level 4, as described in appendix K to this part.

6. Add appendix K to part 25 to read as follows:

Appendix K to Part 25—HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 25.1317. The field strength values for the HIRF environments and equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

(b) HIRF environment II is specified in the following table:

TABLE II.—HIRF ENVIRONMENT II

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

(c) *Equipment HIRF Test Level 1.* (1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibels (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 0.1 percent duty cycle with 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(5) From 400 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 28 V/m peak with 1 kHz square wave modulation with 90 percent depth or greater. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(d) *Equipment HIRF Test Level 2.* (1) From 10 kHz to 400 MHz, use conducted susceptibility tests with CW and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 V/m peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(e) *Equipment HIRF Test Level 3.* Test level 3 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(f) *Equipment HIRF Test Level 4.* (1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

7. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

8. Add § 27.1317 to subpart F to read as follows:

§ 27.1317 High-intensity Radiated Fields (HIRF) Protection.

(a) Each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the rotorcraft must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment I, as described in appendix D to this part;

(2) The system automatically recovers normal operation, in a timely manner, after the rotorcraft is exposed to HIRF environment I, as described in appendix D to this part, unless this conflicts with other operational or functional requirements of that system;

(3) The system is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment II, as described in appendix D to this part; and

(4) Each function required during operation under visual flight rules is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment III, as described in appendix D to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 1, 2, or 3, as described in appendix D to this part.

(c) Each electrical and electronic system that performs a function whose failure would reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 4, as described in appendix D to this part.

9. Add appendix D to part 27 to read as follows:

Appendix D to Part 27—HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 27.1317. The field strength values for the HIRF environments and laboratory equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

(b) HIRF environment II is specified in the following table:

TABLE II.—HIRF ENVIRONMENT II

Frequency (cycles/second)	Field Srength (Volts/Meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

(c) HIRF environment III is specified in the following table:

TABLE III.—HIRF ENVIRONMENT III

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–100 kHz	150	150
100 kHz–400 MHz	200	200
400 MHz–700 MHz	730	200
700 MHz–1 GHz	1,400	240
1 GHz–2 GHz	5,000	250
2 GHz–4 GHz	6,000	490
4 GHz–6 GHz	7,200	400
6 GHz–8 GHz	1,100	170
8 GHz–12 GHz	5,000	330
12 GHz–18 GHz	2,000	330
18 GHz–40 GHz	1,000	420

(d) *Equipment HIRF Test Level 1.* (1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibels (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 0.1 percent duty cycle with 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(5) From 400 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 28 V/m peak with 1 kHz square wave modulation with 90 percent depth or greater. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(e) *Equipment HIRF Test Level 2.* (1) From 10 kHz to 400 MHz, use conducted susceptibility tests with CW and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 V/m peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(f) *Equipment HIRF Test Level 3*. Test level 3 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(g) *Equipment HIRF Test Level 4*. (1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

10. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

11. Add § 29.1317 to subpart F to read as follows:

§ 29.1317 High-intensity Radiated Fields (HIRF) Protection.

(a) Each electrical and electronic system that performs a function whose failure would prevent the continued safe flight and landing of the rotorcraft must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment I, as described in appendix E to this part;

(2) The system automatically recovers normal operation, in a timely manner, after the rotorcraft is exposed to HIRF environment I, as described in appendix E to this part, unless this conflicts with other operational or functional requirements of that system;

(3) The system is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment II, as described in appendix E to this part; and

(4) Each function required during operation under visual flight rules is not adversely affected during and after the time the rotorcraft is exposed to HIRF environment III, as described in appendix E to this part.

(b) Each electrical and electronic system that performs a function whose failure would significantly reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 1, 2, or 3, as described in appendix E to this part.

(c) Each electrical and electronic system that performs such a function whose failure would reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition must be designed and installed so the system is not adversely affected when the equipment providing these functions is exposed to equipment HIRF test level 4, as described in appendix E to this part.

12. Add appendix E to part 29 to read as follows:

Appendix E to Part 29—HIRF Environments and Equipment HIRF Test Levels

This appendix specifies the HIRF environments and equipment HIRF test levels for electrical and electronic systems under § 29.1317. The field strength values for the HIRF environments and laboratory equipment HIRF test levels are expressed in root-mean-square units measured during the peak of the modulation cycle.

(a) HIRF environment I is specified in the following table:

TABLE I.—HIRF ENVIRONMENT I

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–100 MHz	50	50
100 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2,000	200
2 GHz–6 GHz	3,000	200
6 GHz–8 GHz	1,000	200
8 GHz–12 GHz	3,000	300
12 GHz–18 GHz	2,000	200
18 GHz–40 GHz	600	200

(b) HIRF environment II is specified in the following table:

TABLE II.—HIRF ENVIRONMENT II

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–500 kHz	20	20
500 kHz–2 MHz	30	30
2 MHz–30 MHz	100	100

TABLE II.—HIRF ENVIRONMENT II—Continued

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
30 MHz–100 MHz	10	10
100 MHz–200 MHz	30	10
200 MHz–400 MHz	10	10
400 MHz–1 GHz	700	40
1 GHz–2 GHz	1,300	160
2 GHz–4 GHz	3,000	120
4 GHz–6 GHz	3,000	160
6 GHz–8 GHz	400	170
8 GHz–12 GHz	1,230	230
12 GHz–18 GHz	730	190
18 GHz–40 GHz	600	150

(c) HIRF environment III is specified in the following table:

TABLE III.— HIRF ENVIRONMENT III

Frequency (cycles/second)	Field strength (volts/meter)	
	Peak	Average
10 kHz–100 kHz	150	150
100 kHz–400 MHz	200	200
400 MHz–700 MHz	730	200
700 MHz–1 GHz	1,400	240
1 GHz–2 GHz	5,000	250
2 GHz–4 GHz	6,000	490
4 GHz–6 GHz	7,200	400
6 GHz–8 GHz	1,100	170
8 GHz–12 GHz	5,000	330
12 GHz–18 GHz	2,000	330
18 GHz–40 GHz	1,000	420

(d) *Equipment HIRF Test Level 1*. (1) From 10 kilohertz (kHz) to 400 megahertz (MHz), use conducted susceptibility tests with continuous wave (CW) and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 milliamperes (mA) at 10 kHz, increasing 20 decibels (dB) per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 volts per meter (V/m) peak, with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 gigahertz (GHz), use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 0.1 percent duty cycle with 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(5) From 400 MHz to 8 GHz, use radiated susceptibility tests at a

minimum of 28 V/m peak with 1 kHz square wave modulation with 90 percent depth or greater. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(e) *Equipment HIRF Test Level 2.* (1) From 10 kHz to 400 MHz, use conducted susceptibility tests with CW and 1 kHz square wave modulation with 90 percent depth or greater. The conducted susceptibility current must start at a minimum of 0.6 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 30 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, the conducted susceptibility current must be at least 30 mA.

(3) From 100 MHz to 400 MHz, use radiated susceptibility tests at a minimum of 20 V/m peak with CW and 1 kHz square wave modulation with 90 percent depth or greater.

(4) From 400 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 150 V/m peak with pulse modulation of 4 percent duty cycle with a 1 kHz pulse repetition frequency. This signal must be switched on and off at a rate of 1 Hz with a duty cycle of 50 percent.

(f) *Equipment HIRF Test Level 3.* Test level 3 is HIRF environment II in table II of this appendix reduced by acceptable aircraft transfer function and attenuation curves. Testing must cover the frequency band of 10 kHz to 8 GHz.

(g) *Equipment HIRF Test Level 4.* (1) From 10 kHz to 400 MHz, use conducted susceptibility tests, starting at a minimum of 0.15 mA at 10 kHz, increasing 20 dB per frequency decade to a minimum of 7.5 mA at 500 kHz.

(2) From 500 kHz to 400 MHz, use conducted susceptibility tests at a minimum of 7.5 mA.

(3) From 100 MHz to 8 GHz, use radiated susceptibility tests at a minimum of 5 V/m.

Issued in Washington, DC, on January 25, 2006.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service.

[FR Doc. 06–895 Filed 1–31–06; 8:45 am]

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Federal Register

Wednesday,
February 1, 2006

Part VI

Department of Transportation

Federal Aviation Administration

Proposed Advisory Circular (AC) 20–HIRF, The Certification of Aircraft Electrical and Electronic Systems for Operation in the High Intensity Radiated Field (HIRF) Environment; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–23658]

Proposed Advisory Circular (AC) 20–HIRF, The Certification of Aircraft Electrical and Electronic Systems for Operation in the High Intensity Radiated Field (HIRF) Environment

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comments on proposed Advisory Circular (AC) 20–HIRF, The Certification of Aircraft Electrical and Electronic Systems for Operation in the High Intensity Radiated Field (HIRF) Environment. This proposed AC provides information and guidance concerning an acceptable means, but not the only means, of showing compliance with the High Intensity Radiated Field (HIRF) Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on February 1, 2006, regarding the operation of electrical and electronic systems on an aircraft when the aircraft is exposed to an external HIRF environment.

DATES: Comments must be received on or before May 2, 2006.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–23658 using any of the following methods:

1. *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
2. *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001;
3. *Fax:* 1–202–493–2251; or
4. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard E. Jennings, Aircraft Certification Service, Aircraft Engineering Division, AIR–130, Federal Aviation Administration, c/o Atlanta Aircraft Certification Office, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349. Telephone (770) 703–6090. Or, via e-mail at: *Richard.Jennings@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed AC may be examined, before and after the comment closing date, in 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, or on the DOT DMS Web site *http://dms.dot.gov* at any time. All communications received on or before the closing date will be considered by the Manager of the Aircraft Engineering Division, Aircraft Certification Service, before issuing the final Advisory Circular.

Background

The external HIRF environment exists because of the transmission of electromagnetic radio frequency (RF) energy from radar, radio, television, and other ground-based, shipborne, or airborne RF transmitters. Because of the vulnerability of aircraft electrical and electronic systems to interference from the electromagnetic RF energy generated by these transmitters, the FAA proposes to add airworthiness standards to protect these systems from this external HIRF environment. This proposed AC provides designers, manufacturers, and installers, with general information and acceptable means to show compliance with the FAA's proposed HIRF airworthiness regulations.

How To Obtain Copies

You may get a copy of proposed AC 20–HIRF from the Internet at: *http://www.faa.gov/aircraft/draft_docs/*. See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail.

Issued in Washington, DC, on January 25, 2006.

Susan J. M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

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Federal Register

Wednesday,
February 1, 2006

Part VII

Department of Education

Office of Elementary and Secondary Education; Overview Information, Early Childhood Educator Professional Development (ECEPD) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information, Early Childhood Educator Professional Development (ECEPD) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.349A

Dates:

Applications Available: February 6, 2006.

Deadline for Transmittal of Applications: April 7, 2006.

Deadline for Intergovernmental Review: June 6, 2006.

Eligible Applicants: A *partnership* that has not previously received an ECEPD grant and that consists of at least one entity from each of the following categories:

(i) One or more institutions of higher education, or other public or private entities (including faith-based organizations), that provide professional development for early childhood educators who work with children from low-income families in high-need communities.

(ii) One or more public agencies (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990), Head Start agencies, or private organizations (including faith-based organizations).

(iii) If feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse. This entity may be one of the partners described in paragraphs (i) and (ii) under *Eligible Applicants.*

A partnership may apply for these funds only if one of the partners currently provides professional development for early childhood educators working in programs located in high-need communities with children from low-income families.

Estimated Available Funds: $14,330,800.

Estimated Range of Awards: $2,400,000–$4,800,000.

Estimated Average Size of Awards: $3,600,000.

Estimated Number of Awards: 3–6 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the ECEPD program is to enhance the school readiness of young children, particularly disadvantaged young children, and to prevent them from encountering difficulties once they enter school, by improving the knowledge and skills of early childhood educators who work in communities that have high concentrations of children living in poverty.

Projects funded under the ECEPD program provide high-quality, sustained, and intensive professional development for these early childhood educators in how to provide developmentally appropriate school-readiness services for preschool-age children that are based on the best available research on early childhood pedagogy and on child development and learning. For these grants, increased emphasis is being placed on the quality of program evaluations for the proposed projects.

The specific activities for which recipients may use grant funds are identified in the application package.

Priorities

This competition includes one absolute priority, a competitive preference priority and two invitational priorities that are as follows.

Absolute Priority: For FY 2006 this priority is an absolute priority. In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 2151(e)(5)(A) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 6651(e)(5)(A). Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority. This priority is:

High-Need Communities

The applicant partnership, if awarded a grant, shall use the grant funds to carry out activities that will improve the knowledge and skills of early childhood educators who are working in early childhood programs that are located in ''high-need communities.''

An eligible applicant must demonstrate in its application how it meets the statutory requirement in section 2151(e)(5)(A) of the ESEA by including relevant demographic and socioeconomic data about the ''high-need community'' in which each program is located, as indicated in the application package. (See section 2151(e)(3)(B)(i) of the ESEA.)

''High-need community,'' as defined in section 2151(e)(9)(B) of the ESEA, means—

(a) A political subdivision of a State, or a portion of a political subdivision of a State, in which at least 50 percent of the children are from low-income families; or

(b) A political subdivision of a State that is among the 10 percent of political subdivisions of the State having the greatest numbers of such children.

Note: The following additional terms used in or related to this absolute priority have statutory definitions that are included in the application package: ''early childhood educator,'' ''low-income family,'' and ''professional development.''

Competitive Preference Priority: For FY 2006, this priority is a competitive preference priority. This priority is from the notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586), available at *http://www.ed.gov/legislation/FedRegister/finrule/2005–1/012505a.html.* Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets this priority. These points are in addition to any points the application earns under the selection criteria.

When using the priority to give competitive preference to an application, the Secretary will review applications using a two-stage process. In the first stage, the application will be reviewed without taking the priority into account. In the second stage of review, the applications rated highest in stage one will be reviewed for competitive preference. We consider awarding additional (competitive preference) points only to those applicants with top-ranked scores on their selection criteria.

This priority is:

Scientifically Based Evaluation Methods

The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention, as described in the following paragraphs. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus,

when feasible, the project must use an experimental design under which participants—*e.g.*, students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—*e.g.*, students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cutting point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

If the priority is used as a competitive preference priority, points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

Definitions

As used in this notice—

Scientifically based research (section 9101(37) of the ESEA as amended by NCLB, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi-experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score (''cut score'') are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the ''cut score'' is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which

the outcome of interest is measured multiple times before and after the treatment for program participants only.

Invitational Priorities: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—English Language Acquisition Plan

For applicants serving children with limited English proficiency, the Secretary is especially interested in applications that include a specific plan for the development of English language acquisition for these children from the start of their preschool experience. The ECEPD program is designed to prepare children to enter kindergarten with the necessary cognitive, early language, and literacy skills for success in school. School success often is dependent on each child entering kindergarten being as proficient as possible in English so that the child is ready to benefit from formal reading instruction in English when the child starts school.

The English language acquisition plan should, at a minimum: (1) Include a description of the approach for the development of language, based on the linguistic factors or skills that serve as the foundation for a strong language base, which is a necessary precursor for success in the development of pre-literacy and literacy skills for children with limited English proficiency; (2) explain the acquisition strategies, based on best available valid and reliable research, that the applicant will use to address English language acquisition in a multi-lingual classroom; (3) describe how the project will facilitate the children's transition to English proficiency by means such as the use of environmental print in appropriate multiple languages, and hiring bilingual teachers, paraprofessionals, or translators to work in the preschool classroom; (4) include intensive professional development for instructors and paraprofessionals on the development of English language proficiency; and (5) include a timeline that describes benchmarks for the introduction of the development of English language proficiency and the use of measurement tools.

Ideally, at least one instructional staff member in each ECEPD classroom should be dual-language proficient both in a child's first language and in English to facilitate the child's understanding of instruction and transition to English proficiency. At a minimum, each classroom should include a teacher who is proficient in English.

Invitational Priority 2—Classroom Curricula and Teacher Professional Development

The Secretary is especially interested in applications that focus the professional development that will be provided for early childhood educators on the specific curricula promoting young children's school readiness in the areas of language and cognitive development and early reading and numeracy skills that are being used in those educators' early childhood programs, and on the research base supporting that curricula. In addition to being based on scientifically based research, the curricula should have standardized training procedures and published curriculum materials to support implementation by the early childhood educators. The chosen curricula should include a scope and sequence of skills and content with concrete instructional goals that are designed to promote early language, reading, and numeracy skills.

The need for rigorous preschool curricula is driven by the national focus on high-quality preschool experiences that prepare children for formal reading instruction in the elementary grades. The professional development in the ECEPD program provides opportunities for the program participants to achieve greater understanding of the implementation of scientifically based curricula that focus on early language, reading, and numeracy skills of young children. Grantees should focus on assisting the early childhood educators to implement fully the selected curricula and measuring learning outcomes for the children taught by those educators.

Program Authority: 20 U.S.C. 6651(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99, as applicable. (b) The notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes. **Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $14,330,800.

Estimated Range of Awards: $2,400,000–$4,800,000.

Estimated Average Size of Awards: $3,600,000.

Estimated Number of Awards: 3–6 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* A *partnership* that has not previously received an ECEPD grant and that consists of at least one entity from each of the following categories:

(i) One or more institutions of higher education, or other public or private entities (including faith-based organizations), that provide professional development for early childhood educators who work with children from low-income families in high-need communities.

(ii) One or more public agencies (including local educational agencies, State educational agencies, State human services agencies, and State and local agencies administering programs under the Child Care and Development Block Grant Act of 1990), Head Start agencies, or private organizations (including faith-based organizations).

(iii) If feasible, an entity with demonstrated experience in providing training to educators in early childhood education programs concerning identifying and preventing behavior problems or working with children identified as or suspected to be victims of abuse. This entity may be one of the partners described in paragraphs (i) and (ii) under *Eligible Applicants*.

A partnership may apply for these funds only if one of the partners currently provides professional development for early childhood educators working in programs located in high-need communities with children from low-income families.

2. *Cost Sharing or Matching*: Each partnership that receives a grant under this program must provide (1) at least 50 percent of the *total cost* of the project for the entire grant period; and (2) at least 20 percent of the project cost for each year. The project may provide these funds from any source, other than this program, including other Federal sources. The partnership may satisfy these cost-sharing requirements by providing contributions in cash or in-kind, fairly evaluated, including plant, equipment, and services. Only allowable costs may be counted as part of the grantee's share. For example, any indirect costs over and above the allowable amount may not be counted

toward a grantee's share. For additional information about indirect costs, see section IV.5. *Funding Restrictions* of this notice.

IV. Application and Submission Information

1. *Address to Request Application Package*: You may obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain an application via the Internet, use the following Web address: *http://www.ed.gov/programs/eceducator/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: *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 84.349A.

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 in section VII of this notice.

2. *Content and Form of Application Submission*: Requirements concerning the content of the application, together with the forms you must submit, are in the application package for this competition.

Page Limits: The application narrative for this program (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 of the application to the equivalent of no more than 30 typed pages. Part IV of the application is where you, the applicant, provide a budget narrative that reviewers use to evaluate your application. You must limit the budget narrative in Part IV of the application to the equivalent of no more than 5 typed pages. Part V of the application is where you, the applicant, include the Appendices described later in this section, including any response to the Competitive Preference Priority—Scientifically Based Evaluation Methods. You must limit any response to the Competitive Preference Priority to no more than 3 typed pages.

For all page limits, use 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 and budget narratives, including titles, headings, footnotes, quotations, references, and captions. Text in tables, charts, or graphs, and the limited Appendices, may be single spaced.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). You may use other point fonts for any tables, charts, graphs, and the limited Appendices, but those tables, charts, graphs and limited Appendices should be in a font size that is easily readable by the reviewers of your application.
- Any tables, charts, or graphs are included in the overall narrative page limit. The limited Appendices, including the partnership agreement required as a group agreement under 34 CFR 75.128, and any Competitive Preference Priority response, are not part of the overall narrative page limits.
- Appendices are limited to the following: Absolute Priority Form (required); partnership agreement (required); any response to the Competitive Preference Priority; and any position descriptions (and resumes or curriculum vitae if available) of key personnel (including key contract personnel and consultants).

Other application materials are limited to the specific materials indicated in the application package, and may not include any video or other non-print materials.

Our reviewers will not read any pages of your application that—

- Exceed the page limits if you apply these standards; or
- Exceed the equivalent of the page limits if you apply other standards.

3. *Submission Dates and Times*.

Applications Available: February 6, 2006.

Deadline for Transmittal of Applications: April 7, 2006. Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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.

Deadline for Intergovernmental Review: June 6, 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:*

(a) *Indirect Costs*. For purposes of indirect cost charges, the Secretary considers all ECEPD program grants to be ''educational training grants'' within the meaning of section 75.562(a) of EDGAR. Consistent with 34 CFR 75.562, the indirect cost rate for any fiscal agent other than a State agency or agency of local government (such as a local educational agency or a federally recognized Indian tribal government) is limited to a maximum of eight percent or the amount permitted by the fiscal agent's negotiated indirect cost rate agreement, whichever is less. This indirect cost limit applies to cost-type contracts only if those contracts are for educational training as defined in 34 CFR 75.562. Further information about indirect cost rates is in the application package for this competition.

(b) *Pre-award Costs*. For FY 2006 the Secretary approves, under sections 75.263 and 74.25(e)(1) of EDGAR, pre-award costs incurred by recipients of ECEPD grants more than 90 calendar days before the grant award. Specifically, the Secretary approves necessary and reasonable pre-award costs incurred by grant recipients for up to 90 days before the application deadline date. These pre-award costs must be related to the needs assessment that applicants conduct under section 2151(e)(3)(B)(iii) of the ESEA before submitting their applications to determine the most critical professional development needs of the early childhood educators to be served by the project and in the broader community.

Applicants incur any pre-award costs at their own risk. The Secretary is under no obligation to reimburse these costs if for any reason the applicant does not receive an award or if the award is less than anticipated and inadequate to cover these costs.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements*. Applications for grants under this competition must be submitted electronically unless you qualify for an

exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the ECEPD program-CFDA 84.349A must be submitted electronically using 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the ECEPD program 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:

- 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 submission 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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must 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), the Absolute Priority Form and all necessary assurances and certifications and required and optional Appendices. 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 Technical Issues With the Grants.gov System

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.

Exception to Electronic Submission Requirement

You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date. Address and mail or fax your statement to: Rosemary V. Fennell, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C122, FB–6, Washington, DC 20202–6132. Fax: (202) 260–7764.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. 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 84.349A, 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 84.349A, 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.349A, 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

1. *Selection Criteria:* The selection criteria for this competition are from section 75.210 of EDGAR. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The selection criteria are as follows:

(a) *Need for project* (10 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factor:

(i) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(b) *Significance* (10 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(c) *Quality of the project design* (20 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(ii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(d) *Quality of project services* (10 points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(e) *Quality of project personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining

the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Quality of the management plan* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation* (25 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment or progress toward achieving intended outcomes.

(h) *Adequacy of Resources* (5 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(ii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is geographical distribution (section 2151(e)(4)(B) of the ESEA).

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 Notice (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. For specific requirements on grantee reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* For FY 2006, grants under the ECEPD program will be governed by the achievement indicators that the Secretary published in the **Federal Register** on March 31, 2003 (68 FR 15646–15648). These achievement indicators are included in the application package.

In addition, in response to the Government Performance and Results Act of 1993 (GPRA), the Department has established performance measures for assessing the effectiveness of the ECEPD program, which are coordinated with the achievement indicators and are included in the application package. The coordination of these achievement indicators and performance measures is designed to improve program management, and to help Congress, the Department, the Office of Management and Budget, and others review a program's progress toward its goals. For FY 2006 ECEPD grants, the Secretary expects all grantees to document, in the required annual performance report their success in addressing the GPRA performance measures through the following assessment tools: The Early Language and Literacy Classroom Observation (ELLCO); the Peabody Picture Vocabulary Test–III (Receptive); and the PALS Pre-K Alphabet Knowledge-Upper Case subtask. The applicant's evaluation design provided in response to the selection criterion for *Quality of project evaluation* in section V.1. of this notice should include the use of these assessment tools, at a minimum.

VII. Agency Contact

For Further Information Contact: Rosemary Fennell, U.S. Department of Education, 400 Maryland Avenue SW., Room 3C–122, Washington, DC 20202–6132. Telephone: (202) 260–0792, or by e-mail: *eceprofdev@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.

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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: January 27, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 06–937 Filed 1–31–06; 8:45 am]

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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 FEBRUARY 1, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
- Upper Midwest; published 12-9-05

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; published 1-31-06

CONSUMER PRODUCT SAFETY COMMISSION

Organization, functions, and authority delegations:
- Office of Financial Management, Planning, and Evaluation, et al.; published 2-1-06

ENVIRONMENTAL PROTECTION AGENCY

Air quality planning purposes; designation of areas:
- California; published 2-1-06

FEDERAL COMMUNICATIONS COMMISSION

Television broadcasting:
- Children's television programming—
  - Internet Web site addresses display in children's television; processing guidelines for digital broadcasters; published 2-1-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
- North Portland Harbor, OR; correction; published 2-1-06

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Missouri; published 2-1-06

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:
- Allocation of assets—
  - Interest assumptions for valuing and paying benefits; published 1-13-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Nutrient content claims; definition of term healthy; comments due by 2-10-06; published 1-11-06 [FR 06-00268]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 2-6-06; published 12-7-05 [FR 05-23735]
  - Pacific Fishery Management Council; meetings; comments due by 2-8-06; published 11-21-05 [FR 05-22992]

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Acquisition regulations:
- Carbon, alloy, and armor steel plate restriction; comments due by 2-7-06; published 12-9-05 [FR 05-23723]
- Required sources of supply; comments due by 2-7-06; published 12-9-05 [FR 05-23724]

Federal Acquisition Regulation (FAR):
- Inflation adjustment of acquisition-related thresholds; comments due by 2-10-06; published 12-12-05 [FR 05-16971]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Dry cleaning facilities; perchloroethylene emission standards; comments due by 2-6-06; published 12-21-05 [FR 05-24071]
- Metal cans; surface coating; comments due by 2-6-06; published 1-6-06 [FR 06-00068]

Air pollution; standards of performance for new stationary sources:
- Municipal waste combustion units, large; comments due by 2-6-06; published 12-19-05 [FR 05-23968]

Air quality implementation plans; approval and promulgation; various States:
- Maine; comments due by 2-6-06; published 1-5-06 [FR E5-08221]
- Michigan; comments due by 2-6-06; published 1-5-06 [FR E5-08316]
- Virginia; comments due by 2-6-06; published 1-6-06 [FR E6-00037]

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  - Azinphos-methyl; comments due by 2-6-06; published 12-7-05 [FR 05-23719]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Iodomethane; comments due by 2-6-06; published 1-6-06 [FR E6-00026]
- Polymers; molecular weight limitations removed; comments due by 2-6-06; published 12-7-05 [FR 05-23667]

Water programs:
- Oil pollution prevention; spill prevention, control and countermeasure plan requirements; amendments; comments due by 2-10-06; published 12-12-05 [FR 05-23917]

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  - Canada lynx; comments due by 2-7-06; published 11-9-05 [FR 05-22193]

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LIST OF PUBLIC LAWS

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H.R. 4340/P.L. 109–169

United States-Bahrain Free Trade Agreement Implementation Act (Jan. 11, 2006; 119 Stat. 3581)

Last List January 12, 2006

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