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WHEN: Tuesday, May 9, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
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Contents

Federal Register

Vol. 71, No. 83

Monday, May 1, 2006

Agricultural Marketing Service
RULES
Milk marketing orders:
Northeast et al., 25495–25502
NOTICES
Persian (Tahiti) limes; grade standards, 25561–25562

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25560–25561

Air Force Department
NOTICES
Global Positioning System:
Navstar GPS Space Segment / Navigation User L1C Interfaces; implementation; comment request, 25571–25572

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, foreign:
Citrus from Peru, 25487–25495

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25590–25591

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare:
Durable medical equipment, prosthetics, orthotics, and supplies and other issues; competitive acquisition, 25654–25704
NOTICES
State Children's Health Insurance Program:
Allotments and grants to States—
Unexpended FY 2003 appropriation fund distribution; additional FY 2006 funding allotments; provisions for States to use funds for medicaid expenditures, 25651–25652

Coast Guard
PROPOSED RULES
Regattas and marine parades:
Pamlico River, Washington, NC, 25523–25525
Thunder over the Boardwalk Airshow, Atlantic City, NJ, 25526–25528
NOTICES
Organization, functions, and authority delegations:
Sector Upper Mississippi River; implementation, 25598–25599

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

Commission of Fine Arts
NOTICES
Meetings, 25570

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25570–25571

Customs and Border Protection Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25599
Meetings:
Commercial Operations of Customs and Border Protection and Related Functions Departmental Advisory Committee, 25599–25600

Defense Department
See Air Force Department
See Engineers Corps
RULES
Federal Acquisition Regulation (FAR):
Fast payment procedures
Correction, 25507–25508

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25574–25577
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Enhanced Assessment Instruments, 25577–25580
Teacher Incentive Fund, 25580–25584

Energy Department
See Energy Information Administration
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Paducah Gaseous Diffusion Plant, KY, 25584

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25584–25587

Engineers Corps
RULES
Navigation regulations:
Bonneville Lock and Dam, OR and WA; lockage operations and restricted areas changes, 25502–25504
NOTICES
Environmental statements; availability, etc.:
Libby and Hungry Horse Dams, MT; Upper Columbia alternative flood control and fish operations, 25572–25573

Environmental statements; notice of intent:
Little Rock, AR; Pine Mountain Dam & Lake Project, 25573–25574

Environmental Protection Agency
RULES
Air programs:
Fuel and fuel additives—
Highway diesel and nonroad diesel regulations; technical amendments, 25706–25726
Great Lakes Legacy Act of 2002; implementation, 25504–25507
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Site remediation, 25531–25544
Air programs:
Fuel and fuel additives—
Highway diesel and nonroad diesel regulations; technical amendments, 25727–25731
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Nitrogen dioxide, carbon monoxide, sulfur dioxide, and ozone concentrations; new reference and equivalent methods, 25587–25589
Meetings:
Environmental Policy and Technology National Advisory Council, 25589
Senior Executive Service Performance Review Board; membership, 25589

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Export-Import Bank
NOTICES
Meetings; Sunshine Act, 25590

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 25510–25512
NOTICES
Environmental statements; notice of intent:
Port Columbus International Airport, OH, 25628–25629
Meetings:
RTCA, Inc., 25629–25630

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25600–25601
Disaster and emergency areas:
Arkansas, 25601–25602
Illinois, 25602
Kansas, 25602
Missouri, 25602–25603
Oklahoma, 25603–25604
Tennessee, 25604
Texas, 25604–25605

Federal Highway Administration
PROPOSED RULES
Size and weight enforcement and regulations, 25516–25523
NOTICES
Highway planning and construction; licenses, permits, approvals, etc.:
South Carolina; various highway projects, 25630–25631

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 25590
Federal Open Market Committee:
Domestic policy directives, 25590

Federal Trade Commission
PROPOSED RULES
Telemarketing sales rule:
National Do Not Call Registry; access fees, 25512–25516

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Makhnati Island area; subsistence management jurisdiction, 25528–25531

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25591–25593
Meetings:
Vaccines and Related Biological Products Advisory Committee, 25593–25594
Reports and guidance documents; availability, etc.:
Prominent and conspicuous mark of manufacturers on single-use devices, 25594–25595

Forest Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Makhnati Island area; subsistence management jurisdiction, 25528–25531
NOTICES
Meetings:
Resource Advisory Committees—
Hood/Willamette, 25562

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Fast payment procedures
Correction, 25507–25508

Grain Inspection, Packers and Stockyards Administration
NOTICES
Central filing systems; State certifications:
Minnesota, 25562–25563
Meetings:
Grain Inspection Advisory Committee, 25563

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25646–25647
Committees; establishment, renewal, termination, etc.:
Information Reporting Program Advisory Committee, 25647–25648
Health Insurance Portability and Accountability Act of 1996; implementation
Expatriation; individuals losing United States citizenship; quarterly listing, 25648–25649
Meetings:
Taxpayer Advocacy Panels, 25649–25650

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 25565–25567
Five year (sunset) reviews—
Advance notification, 25567
Initiation of reviews, 25568

International Trade Commission
NOTICES
Import investigations:
Ferrovanadium and nitrided vanadium from—
Russia, 25609–25611

Justice Department
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25611–25612

Labor Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25612

Land Management Bureau
NOTICES
Alaska Native claims selection:
Chugach Alaska Corp., 25605
Twin Hills Native Corp., 25605
Coal leases, exploration licenses, etc.:
Colorado, 25605–25606
Montana, 25606

Management and Budget Office
NOTICES
Meetings:
Acquisition Advisory Panel, 25613–25614

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
BLUEBIRD, 25631–25632
BLUE ICE, 25631
JOHN W, 25632
LEA SCOTIA, 25632–25633
SINGAWING, 25633

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Fast payment procedures
Correction, 25507–25508

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 25508–25509
PROPOSED RULES
Fishery conservation and management:
West Coast States and West Pacific fisheries—
Hawaii Archipelago; bottomfish overfishing; public hearings, 25558–25559
Marine mammals:
Incidental taking—
Monterey Bay National Marine Sanctuary, CA; California sea lions and Pacific harbor seals incidental to coastal fireworks displays, 25544–25558
NOTICES
Fishery conservation and management:
Magnuson-Stevens Act provisions—
Georges Bank Cod Hook Sector; partial approval of operations plan and agreement, 25569–25570
Meetings:
Gulf of Mexico Fishery Management Council, 25570

National Park Service
PROPOSED RULES
Special regulations:
Golden Gate National Recreation Area Dog Management Negotiated Rulemaking Advisory Committee Meeting, 25528
NOTICES
Environmental statements; record of decision:
Glacier Bay National Park and Preserve, AK, 25606–25607
Native American human remains, funerary objects; inventory, repatriation, etc.:
American Museum of Natural History, New York, NY, 25607–25608
Sheboygan County Historical Museum, WI, 25608–25609

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
DGI Biotechnologies, LLC, 25613

Office of Management and Budget
See Management and Budget Office

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

Personnel Management Office
NOTICES
Personnel management demonstration project:
Commerce Department alternative personnel management system, 25615–25616

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous materials:
Safety advisories—
Untested compressed gas cylinders; manufacture, marking, and sale, 25633–25640
Meetings:
Pipeline safety—
Public safety advisory committees, 25640–25644

Presidential Documents
PROCLAMATIONS
Special observances:
National Charter Schools Week (Proc. 8007), 25733–25736
EXECUTIVE ORDERS
Government agencies and employees:
Volunteer community service; responsibilities of Federal departments and agencies (EO 13401), 25737–25738
Sudan; blocking property of persons in connection with the conflict in the Dafur region (EO 13400), 25483–25486

Research and Innovative Technology Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25644–25646

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25563–25565

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 25620–25621
Self-regulatory organizations; proposed rule changes:
National Stock Exchange, 25621–25623
Applications, hearings, determinations, etc.:
Frank Russell Investment Co., et al., 25616–25620

Small Business Administration
NOTICES
Loan programs:
Lender risk rating system, 25624–25628
Applications, hearings, determinations, etc.:
Horizon Ventures Fund II, L.P., 25623–25624

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25595–25598

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Swailand worker rights protection and Kazakhstan intellectual property protection; case reviews closed, 25614–25615

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration
See Research and Innovative Technology Administration
PROPOSED RULES
Individuals with disabilities:
Transportation accessibility standards; modifications, 25544

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 25654–25704

Part III
Environmental Protection Agency, 25706–25731

Part IV
Executive Office of the President, Presidential Documents, 25733–25738

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
8007 25735

Executive Orders:
12820 (Revoked by EO 13401) 25737
13067 (See EO 13400) 25483
13400 25483
13401 25737

7 CFR
305 25487
319 25487
1001 25495
1005 25495
1006 25495
1007 25495
1030 25495
1032 25495
1033 25495
1124 25495
1126 25475
1131 25495

14 CFR

Proposed Rules:
39 25510

16 CFR

Proposed Rules:
310 25512

23 CFR

Proposed Rules:
657 25516
658 25516

33 CFR
207 25502

Proposed Rules:
100 (2 documents) 25523, 25526

36 CFR

Proposed Rules:
Ch. I 25528
242 25528

40 CFR
Ch. I 25504
80 25706

Proposed Rules:
63 25531
80 25727

42 CFR

Proposed Rules:
411 25654
414 25654
424 25654

48 CFR
52 25507

49 CFR

Proposed Rules:
27 25544
37 25544
38 25544

50 CFR
679 (2 documents) 25508

Proposed Rules:
100 25528
216 25544
660 25558

Federal Register
Vol. 71, No. 83
Monday, May 1, 2006

Presidential Documents

Title 3—

The President

Executive Order 13400 of April 26, 2006

Blocking Property of Persons in Connection With the Conflict in Sudan's Darfur Region

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*)(NEA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c)(UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that an unusual and extraordinary threat to the national security and foreign policy of the United States is posed by the persistence of violence in Sudan's Darfur region, particularly against civilians and including sexual violence against women and girls, and by the deterioration of the security situation and its negative impact on humanitarian assistance efforts, as noted by the United Nations Security Council in Resolution 1591 of March 29, 2005, and, to deal with that threat, hereby expand the scope of the national emergency declared in Executive Order 13067 of November 3, 1997, with respect to the policies and actions of the Government of Sudan, and hereby order:

Section 1. (a) Except to the extent that sections 203(b) (1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)) may apply, or to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(A) to have constituted a threat to the peace process in Darfur;

(B) to have constituted a threat to stability in Darfur and the region;

(C) to be responsible for conduct related to the conflict in Darfur that violates international law;

(D) to be responsible for heinous conduct with respect to human life or limb related to the conflict in Darfur;

(E) to have directly or indirectly supplied, sold, or transferred arms or any related materiel, or any assistance, advice, or training related to military activities to:

(1) the Government of Sudan;
(2) the Sudan Liberation Movement/Army;
(3) the Justice and Equality Movement;
(4) the Janjaweed; or
(5) any person (other than a person listed in subparagraph (E)(1) through (E)(4) above) operating in the states of North Darfur, South Darfur, or West Darfur that is a belligerent, a nongovernmental entity, or an individual;

(F) to be responsible for offensive military overflights in and over the Darfur region;

(G) to have materially assisted, sponsored, or provided financial, materiel, or technological support for, or goods or services in support of, the activities described in paragraph (a)(ii)(A) through (F) of this section or any person listed in or designated pursuant to this order; or

(H) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to this order.

(b) I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any person listed in or designated pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13067 and expanded in this order, and I hereby prohibit such donations as provided by paragraph (a) of this section.

(c) The prohibitions of paragraph (a) of this section include, but are not limited to, (i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person listed in or designated pursuant to this order, and (ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term ''arms or any related materiel'' means arms or related materiel of all types, military aircraft, and equipment, but excludes:

(i) supplies and technical assistance, including training, intended solely for use in authorized monitoring, verification, or peace support operations, including such operations led by regional organizations;

(ii) supplies of non-lethal military equipment intended solely for humanitarian use, human rights monitoring use, or protective use, and related technical assistance, including training;

(iii) supplies of protective clothing, including flak jackets and military helmets, for use by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only;

(iv) assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement signed January 9, 2005, by the Government of Sudan and the People's Liberation Movement/Army; and

(v) other movements of military equipment and supplies into the Darfur region by the United States or that are permitted by a rule or decision of the Secretary of State, after consultation with the Secretary of the Treasury.

Sec. 4. For those persons listed in or designated pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order

would render these measures ineffectual. I therefore determine that, for these measures to be effective in addressing the national emergency declared in Executive Order 13067 and expanded by this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

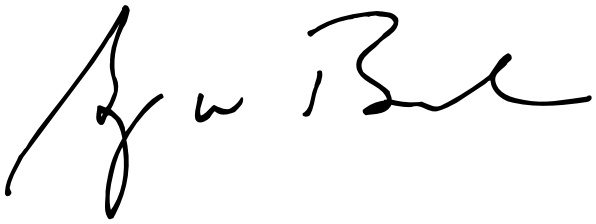
Sec. 5. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken. The Secretary of the Treasury shall ensure compliance with those provisions of section 401 of the NEA (50 U.S.C. 1641) applicable to the Department of the Treasury in relation to this order.

Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency expanded by this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of the IEEPA (50 U.S.C. 1703(c)).

Sec. 7. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 8. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 9. This order is effective at 12:01 a.m. eastern daylight time on April 27, 2006.



THE WHITE HOUSE,

April 26, 2006.

Billing code 3195–01–P

ANNEX

Individuals

1. Gabril Abdul Kareem Badri [Colonel for the National Movement for Reform and Development (NMRD), born circa 1961]

2. Gaffar Mohmed El Hassan [Major General for the Sudan Armed Forces, born June 24, 1952]

3. Musa Hilal [Sheikh and Paramount Chief of the Jalul Tribe in North Darfur, born circa 1960]

4. Adam Yacub Shant [Commander for the Sudan Liberation Army (SLA), born circa 1976]

[FR Doc. 06–4121
Filed 4–28–06; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 71, No. 83
Monday, May 1, 2006

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 03–113–3]

Citrus From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States. Based on the evidence in a recent pest risk analysis, we believe these articles can be safely imported from Peru, provided certain conditions are met. This action will provide for the importation of citrus from Peru into the United States while continuing to protect the United States against the introduction of plant pests.

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

FOR FURTHER INFORMATION CONTACT: Mr. Tony Roman, Import Specialist, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests. The Government of Peru has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow the importation into the United States of grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos.

To evaluate the risks associated with the importation of citrus from Peru, we prepared a draft pest risk analysis entitled ''Importation of Fresh Commercial Citrus Fruit: Grapefruit (*Citrus* x *paradisi* Macfad.); Lime (*C. aurantiifolia* [Christm.] Swingle); Mandarin Orange or Tangerine (*C. reticulata* Blanco); Sweet Orange (*C. sinensis* [L.] Osbeck); Tangelo (*C.* x *tangelo* J.W. Ingram & H.E. Moore) from Peru into the United States'' (October 2003).

On January 12, 2004, we published a notice in the **Federal Register** (69 FR 1694–1695, Docket No. 03–113–1) in which we advised the public of the availability of the draft pest risk analysis. We solicited comments concerning the pest risk analysis for 60 days ending March 12, 2004, and received 14 comments by that date. The comments were from Members of Congress, foreign importers, foreign citrus producers, foreign and domestic exporters and distributors, State departments of agriculture, and an agricultural trade service. We considered the comments we received on the draft pest risk analysis in the development of our proposal and discussed the comments in our proposed rule.

On September 30, 2005, we published in the **Federal Register** (70 FR 57206–57213, Docket No. 03–113–2) a proposed rule [1] to allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States. We solicited comments concerning our proposal for 60 days ending November 29, 2005. We received 24 comments by that date, from Members of Congress, importers, exporters, foreign citrus producers, domestic growers, and private citizens. Nineteen of the commenters fully supported the proposed rule. The issues raised by the remaining commenters are discussed below.

General Comments

Two commenters noted that the pest risk analysis states that limes (*C. aurantiifolia*) are poor hosts or nonhosts of Mediterranean fruit fly (Medfly, *Ceratitis capitata*) and *Anastrepha* spp. fruit flies and that APHIS does not require mandatory cold treatment of commercial *C. aurantiifolia* fruit to mitigate for those pests. The commenters asked why, then, the proposed rule did not exempt limes from the cold treatment requirement.

The commenters are correct; we had intended to exempt limes from the cold treatment requirement in the proposed rule, but inadvertently failed to do so. Therefore, in this final rule the cold treatment requirements in § 319.56–2pp, paragraph (f), include an exception for limes (*C. aurantiifolia*).

One commenter asked how APHIS could cite the effectiveness of fruit cutting with regard to Spanish clementines when APHIS discovered Spanish clementines infested with Medfly only a few years ago.

The purpose of fruit cutting is not to serve as a mitigation measure, but rather, to monitor the effectiveness of cold treatment. When we revised our cold treatment schedules in 2002 by removing the lower temperature/longer duration applications (an action we took in response to the detection of Medfly in Spanish clementines), we also began requiring that all fruit cold treated for Medfly be cut and sampled at the port of first arrival in order to ensure that the treatment was effective. In the case of clementines from Spain and other fruit cold treated for Medfly, we believe fruit cutting has been an effective way of monitoring the efficacy of cold treatment.

One commenter asked that we explain in the final rule that satsuma (*Citrus reticulata* Blanco var. satsuma) is also known as *Citrus unshiu* Marcow var. Satsuma and clementine (*C. reticulata* var. clementine or *Citrus reticulata* Blanco cultigroup Tangerine cv. 'Clementine') is considered to belong to the tangerine group.

The citrus taxonomy we used in the pest risk analysis and proposed rule is based on the Swingle system. While the taxonomy of citrus is not established, most researchers use the Swingle system, which recognizes 16 species of

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0079, then click on ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

citrus. We believe it is appropriate to employ the system authored by Swingle for purposes of classification because it is generally accepted in the scientific community.

The Citrus Fruit Borer

Several commenters took issue with our providing for inspection as the only mitigation measure of *Ecdytolopha aurantiana,* the citrus fruit borer. Two commenters stated that the citrus borer is a dangerous pest and poses a great risk to the U.S. citrus industry and requested additional mitigation measures be required for the borer. One of these commenters suggested that mitigation measures include certification that the fruit was grown in an area free of the citrus fruit borer, which the commenter claimed could be verified with a parapheromone that can be used in trapping, and/or treatment with an irradiation dose of 400 Gy.

We continue to believe that *E. aurantiana* is very easy to detect in visual inspections based on its effects on the fruit. As stated in our pest risk analysis, ''Fruit attacked by *E. aurantiana* gradually develop a necrotic area around the entrance hole caused by the larva in the rind of the fruit, and then the fruit either drops prematurely or develops a bright orange color distinct from healthy fruit.'' Because these symptoms are easy to recognize and highly visible, the fruit would not be marketable and we expect it to be rejected during packing or during the subsequent inspection conducted in Peru for *E. aurantiana.*

Two commenters expressed concern for inspection being the only mitigation measure for the citrus fruit borer because of the small number of consignments typically inspected. The commenters cited what they described as the unreliability of inspections now that port inspections are largely the responsibility of the Department of Homeland Security (DHS) as another factor. The commenters added that port inspections have suffered, citing a 2004 Government Accountability Office report, and took issue with our position regarding port inspections in our proposed rule. The commenters contended that vacancies of qualified personnel is greater than when the transfer of inspection duties to DHS took place and that attrition outpaces new hires. With more fresh produce being imported and fewer qualified inspectors, the commenters stated, the training program for new inspectors is not at the same level as the original APHIS training program.

With respect to the amount of shipments being inspected, our proposal called for all consignments of Peruvian citrus to be inspected prior to exportation and accompanied by a phytosanitary certificate with a specific declaration stating that the consignment has been inspected and found free of *E. aurantiana.* The primary object of the inspection that will take place in the United States and be conducted by DHS port inspectors will be to monitor the effectiveness of cold treatment.

With respect to staffing levels, there was an initial drop in the number of inspectors following the transfer of port inspection responsibilities from APHIS to DHS in June 2003: APHIS transferred 1,507 agriculture inspectors to DHS, but by October 2004, the number of inspectors had decreased to 1,452. However, the loss of those 55 inspectors was more than offset by February 2005, at which time 109 new agricultural specialists had completed New Officer Training and were working at ports of entry. In addition, DHS approved 14 training classes for new officers which began in the summer of 2004 and continued through January 2006. As of February 2006, DHS had 1,858 agriculture inspectors and plans to hire 248 new officers this year to offset any projected attrition.

With respect to training, there was a need to provide pest-exclusion training to those Immigration and Naturalization Service, U.S. Border Patrol, and U.S. Customs Service personnel who were transferred to DHS' Bureau of Customs and Border Protection (CBP), just as the mission of CBP dictated the need to provide cross-training in other specialties to those APHIS personnel who were transferred to CBP. Planning and delivering training for all these personnel necessarily had to be accomplished over time, but all CBP inspection personnel have now been fully and satisfactorily trained in pest exclusion.

One commenter stated that if there is ever evidence of pest transfer of *E. aurantiana* into the United States that can be linked to shipments of Peruvian citrus, APHIS must implement additional measures beyond what was in the proposed rule to prevent the further introduction of the pest into the United States. The commenter added that APHIS must suspend shipments of citrus from Peru until additional measures are implemented.

As stated in the proposed rule, if a single *E. aurantiana* is found upon inspection, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that inspection does not appear to be an effective mitigation for *E. aurantiana,* APHIS will take additional measures, which may include suspending the importation of citrus from Peru and conducting an investigation into the cause of the deficiency.

One commenter stated that there is an assumption that cold treatment will kill the citrus fruit borer, but that this conclusion is not supported in the pest risk analysis.

We did not state, nor did we intend to imply, in our proposed rule or pest risk analysis that cold treatment would serve as a mitigation measure for the citrus fruit borer. To address the risk presented by the citrus fruit borer, we are requiring that all shipments be inspected prior to export and accompanied by a phytosanitary certificate with an additional declaration stating that the consignment has been inspected and found free of *E. aurantiana.*

Economic Analysis

Two commenters raised several concerns with some of the conclusions in the proposed rule's economic analysis. One of these commenters took issue with our conclusion that imports of citrus from Peru would not have a negative impact on the domestic citrus industry because of the small amount of citrus we are expecting to import. The commenter added that we must consider the cumulative effect of all of our import rules. The commenter also took issue with how much of the information used for the analysis was based on Florida's citrus industry. The commenter stated that while the percentage of California's citrus production is small compared to the country as a whole, it is almost entirely sold for fresh, unlike Florida where only 10 percent is sold for fresh. Therefore, the commenter stated, this rule would have a much greater impact on the California citrus industry than the Florida citrus industry. The commenter stated that the impacts on citrus sold for fresh in the United States needed more examination.

One commenter also took issue with our statement in the proposed rule that clementines and mandarins are not produced in the United States in commercially significant quantities. The commenter cited statistics from a 2004 California Department of Food and Agriculture report that showed there are 15,000 acres of these varieties planted in California. Each acre is equal to about 20 metric tons of fruit; meaning that 300,000 metric tons of fresh mandarins are being produced. The commenter stated that gross revenue per acre is an

estimated $5,000 to $6,000, resulting in a minimum of a $75 million industry.

Two commenters took issue with our statement that imports of Peruvian citrus would complement citrus production in the United States. One of these commenters noted that fresh shipments of navel oranges from Texas peak in September/October, from Florida in September/December, and from California in November to May. The second commenter stated that allowing citrus imports during the period of February through September presents a significant competitive challenge to domestic citrus production intended for fresh utilization that should not be minimized.

We have addressed the commenters' concerns in the revised economic analysis that is presented under the heading ''Executive Order 12866 and Regulatory Flexibility Act'' in this final rule.

One commenter stated that our definition of small producer is ambiguous. The commenter stated that a citrus producer with annual gross revenues of $750,000 is one who has 300 acres of citrus and breaks even. The commenter estimated that 90 percent of the California citrus industry consists of family farms.

The Small Business Administration (SBA) determines the definitions of small businesses, not APHIS. SBA has established a size standard for most industries in the U.S. economy. As is the case with most agricultural production, a small citrus producer is defined as a business with gross annual revenue of $750,000 or less.

Amendment to Treatment Regulations

In our proposed provisions concerning the cold treatment of citrus from Peru, we stated that fruit would have to be cold treated in accordance with part 305 of the regulations. Therefore, in this final rule, we have amended the table in § 305.2(h)(2)(i) to include the appropriate treatment schedule for citrus from Peru. In addition, as a housekeeping measure, we have removed the footnote that has appeared at the end of the table. That footnote, which noted the availability of irradiation as an alternative treatment against mango seed weevil and 11 species of fruit flies, was no longer entirely accurate due to the changes made in a recent final rule (71 FR 4451–4464, published January 27, 2006) that established a new minimum generic dose of irradiation for most plant pests of the class Insecta. The regulatory text that precedes the table accurately indicates that treatment by irradiation in accordance with § 305.31 may be substituted for other approved treatments for any of the pests listed in § 305.31(a), so it is not necessary to maintain the footnote after the table.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Note: In our September 2005 proposed rule, we proposed to add the conditions governing the importation of citrus from Peru as § 319.56–2nn. In this final rule, those conditions are added as § 319.56–2pp.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for key limes and mandarins from Peru is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the fruits and vegetables regulations to allow the importation, under certain conditions, of fresh commercial citrus fruit (grapefruit, limes, mandarin oranges or tangerines, sweet oranges, and tangelos) from approved areas of Peru into the United States. Based on the evidence in a recent pest risk analysis, we believe these articles can be safely imported from Peru, provided certain conditions are met. This action provides for the importation of citrus from Peru into the United States while continuing to protect the United States against the introduction of plant pests.

Peru is not considered a major world producer of citrus, and its citrus industry is relatively small compared to neighboring countries like Brazil, Uruguay, and Argentina. As shown in table 1, oranges account for the greatest proportion of citrus production in Peru (270,673 metric tons), followed by lemons and limes (238,179 metric tons), tangerines, clementines, mandarins, and satsumas (131,787 metric tons), and grapefruit and pomelos (30,500 metric tons).

TABLE 1.—CITRUS PRODUCTION IN PERU (2000)

Crop	Area harvested (hectares)	Production (metric tons)
Oranges	23,353	270,673
Lemons and limes	23,363	238,179
Tangerines, clementines, mandarins, and satsumas	7,375	131,787
Grapefruit and pomelos	1,750	30,500

Source: World Resources Institute (2002), cited in the pest risk analysis.

Peruvian officials have identified five areas or zones from which citrus would, or potentially could be, exported to the United States. Table 2 indicates the area planted to citrus in each of the five zones. Export citrus is produced in zones I to IV (Piura, Lambayeque, Lima and Ica); however, Peru has also identified the potential for exports from the jungle region in zone V (Junin). Zone I (Piura) accounts for 41 percent of the land area in citrus production.

TABLE 2.—AREA IN CITRUS PRODUCTION IN PERU, BY ZONE

Zone	Area planted to citrus (hectares)
I Piura	13,005
II Lambayeque	4,592
III Lima	3,251
IV Ica	1,728
V Junin	8,822

Source: Carbonell Torres (2002), cited in the pest risk analysis.

Peru exported 11,339 metric tons of citrus in 2003 (table 3). Five exporters in four packinghouses account for 98 percent of the total exports.

TABLE 3.—CURRENT CITRUS EXPORTS FROM PERU

Destination	Volume exported (metric tons)
Belgium	412
Canada	1,032
Colombia	158
Ecuador	363
Hong Kong	144
Ireland	154
Netherlands	3,712
Singapore	20
Spain	282
United Kingdom	3,907
Venezuela	1,139
Others	16
Total	11,339

Source: Carbonell Torres (2002), cited in the pest risk analysis.

The United States produced 11.4 million metric tons of citrus fruit in 2004–2005, valued at $2.39 billion. Citrus is produced in Florida, California, Arizona, and Texas. Florida accounted for 67 percent of U.S. citrus production in 2004–2005, while California accounted for 29 percent, Texas for 3 percent, and Arizona for 1 percent. Florida and California each accounted for 47 percent of the value of production, while Texas and Arizona accounted for 4 percent and 2 percent, respectively.

In Florida, 89 percent of the citrus produced is utilized for processing. However, a much larger percentage of the citrus produced in California (78 percent), Arizona (62 percent), and Texas (52 percent) is utilized for fresh production. Thus, whereas Florida accounts for 88 percent of the 7.7 million metric tons of citrus processed in the United States, California accounts for 70 percent of the 3.7 million metric tons of U.S. fresh citrus production.

TABLE 4.—CITRUS PRODUCTION IN THE UNITED STATES: ACREAGE, PRODUCTION, UTILIZATION, AND VALUE OF TOTAL CITRUS BY STATE

[2004–2005]

State	Bearing acreage (acres)	Production (1,000 metric tons)	Utilization of production (1,000 metric tons)		Value of production (1,000 dollars)[1]
			Fresh	Processed	
Arizona	26,500	127	79	48	$38,276
California	243,800	3,309	2,591	718	1,131,851
Florida	641,400	7,588	836	6,752	1,130,444
Texas	27,300	339	177	162	88,684
United States	939,000	11,363	3,683	7,680	2,389,255

Source: National Agricultural Statistics Service (NASS), United States Department of Agriculture (USDA) (September 2005) (*http://www.nass.usda.gov*).

[1] Packinghouse-door equivalents.

Oranges accounted for the major proportion of the individual citrus crops produced in the United States (table 5). In 2004–2005, 9.1 million metric tons of oranges were produced, valued at $1.5 billion. Grapefruit was valued at $398 million, lemons at $351 million, tangerines at $130 million, tangelos at $8 million, and temples at $3 million. NASS does not cite similar statistics on a by-crop basis for clementines and mandarins specifically. However, according to California Citrus Mutual, 15,000 acres of these varieties are planted in California, representing an approximately $75 million industry.[2]

TABLE 5.—CITRUS PRODUCTION IN THE UNITED STATES: ACREAGE, PRODUCTION, UTILIZATION, AND VALUE BY CROP

[2004–2005]

Crop	Bearing acreage (acres)	Production (1,000 metric tons)	Utilization of production (1,000 metric tons)		Value of production (1,000 dollars)[1]
			Fresh	Processed	
Oranges	732,100	9,112	2,212	6,900	$1,498,063
Grapefruit	103,500	1,008	619	389	397,909
Lemons	58,500	813	562	251	351,897
Tangelos	6,400	70	22	48	8,004
Tangerines[2]	35,600	331	259	72	130,068

[2] California Citrus Mutual Perspective, October 4, 2004.

TABLE 5.—CITRUS PRODUCTION IN THE UNITED STATES: ACREAGE, PRODUCTION, UTILIZATION, AND VALUE BY CROP—Continued

[2004–2005]

Crop	Bearing acreage (acres)	Production (1,000 metric tons)	Utilization of production (1,000 metric tons)		Value of production (1,000 dollars) [1]
			Fresh	Processed	
Temples	2,900	29	9	20	3,314

Source: NASS, USDA (September 2005) (*http://www.nass.usda.gov*).
[1] Packinghouse-door equivalents.
[2] Published estimates include Florida only. Estimates include Fallglo, Sunburst, and Honey varieties only.

In 2004, the United States imported 478,400 metric tons of citrus valued at $307.2 million (table 6). The major countries from which citrus fruit were imported included Mexico, Spain, South Africa, Australia, and Chile. Lemons and limes, mandarins, and oranges were the major products imported, and accounted for 48 percent, 32 percent, and 19 percent of the value of imports, respectively.

TABLE 6.—U.S. IMPORTS OF CITRUS FRUITS

[2004]

Commodity	Value (U.S. dollars in millions)	Quantity (metric tons)	Major countries from which citrus is imported, and percent share import value [1]
Lemons and limes	$146.5	321,100	Mexico (88%), Chile (7.6%), Spain (2%).
Mandarins	99.0	77,300	Spain (76.2%), South Africa (12.6%), Australia (6.4%), Mexico (2.2%), Morocco (1.4%).
Oranges	58.8	65,700	South Africa (45.2%), Australia (42.8%), Mexico (9.1%), Dominican Republic (1.2%).
Grapefruit	1.6	13,800	Bahamas (68.6%), Mexico (26.0%), Canada (2.9%), Israel (2.4%).
Other citrus fruit [2]	1.3	600	Jamaica (68.0%), Israel (25.1%), Italy (3.7%), Vietnam (1.2%), Morocco (1.2%).
Total citrus fruit	307.2	478,400	Mexico (44.5%), Spain (25.5%), South Africa (12.9%), Australia(10.3%), and Chile (3.6%).

Source: World Trade Atlas (2005) (*http://www.gtis.com*).
[1] Only countries accounting for more than 1 percent of the value of imports are included in table 6.
[2] Includes various fresh and dried citrus fruits, such as kumquats, citrons, bergamots, and Tahitian, Persian, and other limes of the *Citrus latifolia* variety.

Peruvian exporters estimated that exports of citrus to the United States would total 5,100 metric tons a year. Tangerines/mandarins and tangelos are expected to comprise 69 percent of these exports (table 7). The estimated volume of 5,100 metric tons of U.S. citrus imports from Peru would comprise a relatively minimal amount compared to current U.S. citrus imports of 478,400 metric tons and U.S. domestic citrus production of 11.4 million metric tons (table 8). Table 9 compares the volume of fresh citrus imports from Peru to the corresponding fresh citrus production in the United States on a by-crop basis, based on available data.

TABLE 7.—ESTIMATED ANNUAL VOLUME OF PERUVIAN CITRUS EXPORTS TO THE UNITED STATES [1]

Commodity	Metric tons	Number of 40-foot shipping containers [2]
Tangerine/mandarin	2,000	100
Tangelo	1,500	75
Key lime	600	30
Clementine	500	25
Washington navel orange	300	15
Grapefruit	200	10
Total	5,100	255

Sources: (Carbonell Torres, 2003, and Cargo Systems, 2001, cited in the pest risk analysis).
[1] Volumes were estimated for the year 2004.
[2] A conversion factor of 20 metric tons per 40-foot shipping container is used.

TABLE 8.—COMPARISON OF ESTIMATED U.S. CITRUS IMPORTS FROM PERU TO CURRENT U.S. CITRUS IMPORTS AND U.S. DOMESTIC CITRUS PRODUCTION

Source of citrus	Volume (metric tons)
Total U.S. citrus production (fresh and processed)	11,363,000
Fresh citrus production in California	2,591,000
Fresh citrus production in Florida	836,000
Fresh citrus production in Texas	177,000
Fresh citrus production in Arizona	79,000
Total U.S. fresh citrus production	3,683,000
U.S. imports of citrus	478,400
Estimated U.S. fresh citrus imports from Peru	5,100

TABLE 9.—COMPARISON OF ESTIMATED FRESH CITRUS IMPORTS FROM PERU WITH FRESH CITRUS PRODUCTION IN THE UNITED STATES, BY CROP

Commodity	Peruvian imports (metric tons) (2004)	U.S. fresh production (metric tons) (2004–2005)
Tangerine/mandarin	2,000	[1] 259,000
Tangelo	1,500	22,000
Key lime	600	NA
Clementine	500	[1] NA
Orange	300	2,212,000
Grapefruit	200	619,000
Total	5,100	3,683,000

[1] U.S. production estimates are for tangerines only. For estimates of clementine and mandarin production in California, please see the above discussion of citrus production in the United States.
NA = Not available from table 5.

Table 10 shows available information regarding the shipping seasons for the Peruvian citrus crops that may be imported into the United States. Table 11 shows available information regarding the marketing seasons for citrus fruits produced in the United States.

Qualitative comparison of this information shows that potential overlaps in marketing seasons will depend on the crop and the area where it is produced. For example, tangerines/mandarins and tangelos are expected to comprise 69 percent of the Peruvian fresh citrus imports. The tangelo imports are expected from July to September, and are therefore not expected to overlap with the marketing season for tangelos from Florida (October 15 to April 15). Similarly, Peruvian mandarin imports from March to May are not expected to overlap with tangerine shipments from Arizona (November 1 to February 1), although the imports may overlap with the marketing seasons for tangerines from California (November 1 to May 15) and Florida (October 1 to April 1). Information provided by U.S. citrus grower organizations further indicates that the shipping season for Peruvian citrus imports may overlap with the marketing season of certain U.S. produced citrus fruits.

Thus, though the small quantities of Peruvian imports may not be likely to affect overall U.S. fresh citrus production significantly, certain groups of producers could potentially be negatively affected by the rule depending on the crop, the area where it is produced, and the extent to which its marketing period could overlap with Peruvian imports. However, the extent of these potential impacts cannot be determined with certainty at present.

TABLE 10.—PERUVIAN CITRUS SHIPPING SEASONS

[February to September]

Crop	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Clementine				X	X	X	X	X
Key lime	X	X	X					
Mandarin		X	X	X				
Orange					X	X	X	X
Tangelo						X	X	X

Source: Carbonell Torres, 2002, cited in the pest risk analysis.

TABLE 11.—MARKETING SEASONS OF U.S. CITRUS FRUITS, BY CROP AND STATE

Crops and states	Period
Oranges:	
Arizona	November 1 to August 31.
California Navels	November 1 to June 15.
California Valencias	March 15 to December 20.
Florida Early and Midseason	October 1 to April 15.
Florida Valencias	February 1 to July 31.
Texas	September 25 to May 15.
Grapefruit:	
Arizona	November 1 to July 31.
California	November 1 to October 31.
Florida	September 10 to July 31.
Texas	October 1 to May 30.
Lemons:	
Arizona	August 15 to March 1.
California	August 1 to July 31.
Tangelos:	
Florida	October 15 to April 15.
Tangerines:	
Arizona	November 1 to February 1.
California	November 1 to May 15.
Florida	October 1 to April 1.
Temples:	
Florida	December 1 to May 1.

Source: NASS, USDA (September 2005) (*http://www.nass.usda.gov*).

According to the 2002 Census of Agriculture, there were 17,727 citrus farms in the United States in 2002.[3] As noted previously, the SBA defines a small citrus producer as one with annual gross revenues no greater than $750,000. NASS, USDA, reported that 3.8 percent of U.S. fruit and tree nut producers accounted for 95.1 percent of sales in 1982, 4.2 percent of fruit and tree nut producers accounted for 96.2 percent of sales in 1987, and 4.6 percent of fruit and tree nut producers accounted for 96.7 percent of sales in 1992. These data indicate that the majority of U.S. citrus producers are small entities.

Qualitative comparison of the shipping seasons for the Peruvian citrus imports (table 10) and the marketing seasons for citrus fruits produced in the United States (table 11) shows that potential overlaps in marketing seasons will depend on the crop and the area where it is produced. Thus, certain groups of producers could potentially be negatively affected by the rule, depending on the crop, the area where it is produced, and the extent to which its marketing period could overlap with Peruvian imports. However, the extent of these potential impacts cannot be determined with certainty at present.

Nevertheless, U.S. fresh citrus producers in general are not expected to be significantly impacted by the rule. The estimated volume of 5,100 metric tons of U.S. citrus imports from Peru would comprise a minimal amount compared to current U.S. citrus imports of 478,400 metric tons and U.S. domestic citrus production of 11.4 million metric tons (table 6). With regard to U.S. fresh citrus production specifically, it also comprises a minimal amount compared to fresh citrus production in Arizona (79,000 metric tons), Texas (177,000 metric tons), Florida (836,000 metric tons), California (2,591,000 metric tons), and total U.S. fresh citrus production (3,683,000 metric tons).

This rule will likely benefit importers of citrus fruits. The number of importers that can be classified as small is not known. However, the rule will likely benefit, rather than adversely impact, small entities in these industries, which include: Fresh fruit and vegetable wholesalers with no more than 100 employees, North American Industry Classification System (NAICS) code 422480; wholesalers and other grocery stores with annual gross revenues no greater than $23 million, NAICS 445110; warehouse clubs and superstores with annual gross revenues no greater than $23 million, NAICS 452910; and fruit and vegetable markets with gross revenues no greater than $6 million, NAICS 445230. Consumers should also benefit through the increased availability of fresh citrus fruit throughout the year.

Given the small fraction that Peruvian fresh citrus imports will comprise of total domestic fresh citrus supply, APHIS does not expect significant effects on the overall supply and price of fresh citrus fruits produced in the United States. Under the Plant Protection Act, the Secretary may prohibit or restrict the importation of plants and plant products if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of a plant pest or noxious weed. Thus, our determinations as to whether a new agricultural commodity can be safely imported are based on the findings of pest risk analysis, not on factors such as economic competitiveness. In addition, APHIS is bound under international trade agreements to remove barriers to trade in the event that such barriers are found by scientific analysis to be unnecessary. In this case, we have determined, based on the information presented in the pest risk analysis, that fresh citrus fruits imported under the conditions in this rule will not result in the introduction and dissemination of a plant pest or noxious weed into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows citrus to be imported into the United States from Peru. State and local laws and regulations regarding citrus imported under this rule will be preempted while the fruit is in foreign commerce. Fresh

[3] NASS, USDA, 2004, *http://www.nass.usda.gov/census/census02.*

citrus are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of citrus from Peru under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[4] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0289.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service 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. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR parts 305 and 319 are amended as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

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

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by removing footnote 1 and by adding, under Peru, an entry for grapefruit, mandarins or tangerines, sweet oranges, and tangelos, in alphabetical order, to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Peru			
*	*	*	*
	Grapefruit, mandarins or tangerines, sweet oranges, and tangelos.	*Anastrepha fraterculus, A. obliqua, A. serpentina, and Ceratitis capitata.*	CT T107–a–1
*	*	*	*

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

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

■ 4. A new § 319.56–2pp is added to read as follows:

§ 319.56–2pp Conditions governing the importation of citrus from Peru.

Grapefruit (*Citrus paradisi*), limes (*C. aurantiifolia*), mandarins or tangerines (*C. reticulata*), sweet oranges (*C. sinensis*), and tangelos (*Citrus tangelo*) may be imported into the United States from Peru under the following conditions:

[4] Go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2005–0079, click on ''Submit,'' then click on the Docket ID link in the search results page. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

(a) The fruit must be accompanied by a specific written permit issued in accordance with § 319.56–3.

(b) The fruit may be imported in commercial shipments only.

(c) *Approved growing areas.* The fruit must be grown in one of the following approved citrus-producing zones: Zone I, Piura; Zone II, Lambayeque; Zone III, Lima; Zone IV, Ica; and Zone V, Junin.

(d) *Grower registration and agreement.* The production site where the fruit is grown must be registered for export with the national plant protection organization (NPPO) of Peru, and the producer must have signed an agreement with the NPPO of Peru whereby the producer agrees to participate in and follow the fruit fly management program established by the NPPO of Peru.

(e) *Management program for fruit flies; monitoring.* The NPPO of Peru's fruit fly management program must be approved by APHIS, and must require that participating citrus producers allow APHIS inspectors access to production areas in order to monitor compliance with the fruit fly management program. The fruit fly management program must also provide for the following:

(1) *Trapping and control.* In areas where citrus is produced for export to the United States, traps must be placed in fruit fly host plants at least 6 weeks prior to harvest at a rate mutually agreed upon by APHIS and the NPPO of Peru. If fruit fly trapping levels at a production site exceed the thresholds established by APHIS and the NPPO of Peru, exports from that production site will be suspended until APHIS and the NPPO of Peru conclude that fruit fly population levels have been reduced to an acceptable limit. Fruit fly traps are monitored weekly; therefore, reinstatements of production sites will be evaluated on a weekly basis.

(2) *Records.* The NPPO of Peru or its designated representative must keep records that document the fruit fly trapping and control activities in areas that produce citrus for export to the United States. All trapping and control records kept by the NPPO of Peru or its designated representative must be made available to APHIS upon request.

(f) *Cold treatment.* The fruit, except for limes (*C. aurantiifolia*), must be cold treated for *Anastrepha fraterculus*, *A. obliqua*, *A. serpentina*, and *Ceratitis capitata* (Mediterranean fruit fly) in accordance with part 305 of this chapter.

(g) *Phytosanitary inspection.* Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Peru stating that the fruit has been inspected and found free of *Ecdytolopha aurantiana.*

(h) *Port of first arrival sampling.* Citrus fruits imported from Peru are subject to inspection by an inspector at the port of first arrival into the United States in accordance with § 319.56–2d(b)(8). At the port of first arrival, an inspector will sample and cut citrus fruits from each shipment to detect pest infestation. If a single live fruit fly in any stage of development or a single *E. aurantiana* is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented.

(Approved by the Office of Management and Budget under control number 0579–0289)

Done in Washington, DC, this 26th day of April 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–4065 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket no. AO–14–A75, et al.; DA–06–06]

Milk in the Northeast and Other Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the current ten Federal milk marketing orders issued under the Agricultural Marketing Agreement Act of 1937 (AMAA) to reflect recent amendments to the AMAA. The Milk Regulatory Equity Act of 2005, which was signed into law on April 11, 2006, amended the AMAA to ensure regulatory equity between and among dairy farmers and handlers for sales of packaged fluid milk in Federal milk marketing order areas and into certain non-Federally regulated milk marketing areas from Federal milk marketing areas.

7 CFR parts	Marketing area	AO Nos.
1001	Northeast	AO–14–A75.
1005	Appalachian	AO–388–A19.
1006	Florida	AO–356–A40.
1007	Southeast	AO–366–A48.
1030	Upper Midwest	AO–361–A41.
1032	Central	AO–313–A50.
1033	Mideast	AO–166–A74.
1124	Pacific Northwest	AO–368–A36.
1126	Southwest	AO–231–A69.
1131	Arizona Las-Vegas	AO–271–A41.

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

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator for Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule implements the provisions of the Milk Regulatory Equity Act of 2005 (Pub. L. 109–215, 120 Stat. 328), that amends the Agricultural Marketing Agreement Act of 1937 (AMAA). In passing this amendment, the congressional intent is to ''* * * ensure regulatory equity between and among all dairy farmers and handlers for sales of packaged fluid milk in federally regulated milk marketing areas and into certain non-federally regulated milk marketing areas from federally regulated areas, and for other purposes.''

The Milk Regulatory Equity Act of 2005 provides for and accordingly, this final rule amends the current ten Federal milk marketing orders to: (1) Require fluid milk handlers located in Federal milk marketing order areas as described on the date of enactment, but

not regulated by any Federal milk marketing order, to pay Federal order minimum prices to the Federal order where the handler is physically located for sales of packaged fluid milk into non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for milk, excluding plants pooled on another Federal order, plants subject to minimum pricing under State regulations, exempt plants, and producer-handlers with less than three-million pounds of route distribution; (2) Partially or fully regulate any producer-handler that has total distribution of Class I products of own-farm production in excess of three-million pounds and distributes fluid milk in the Arizona-Las Vegas marketing order area; and (3) Remove the State of Nevada from the marketing area definition of any Federal order.

This final rule amends provisions in each of the ten Federal milk marketing orders concerning pool plants and producer-handlers that appear in § 1____.7 and § 1____.10 of each order. Concerning these amendments, conforming changes also are made to order provisions in parts 1030, 1032, 1124 and 1131. Finally, in part 1131, Clark County, Nevada is removed from the definition of the Arizona-Las Vegas marketing area.

The Milk Regulatory Equity Act of 2005 specifically amends section 608c(11) of the AMAA by removing the following: ''The price of milk paid by a handler at a plant operating in Clark County, Nevada shall not be subject to any order issued under this section.'' This removal of the Clark County exemption results in handlers located in Clark County, Nevada, now being subject to Federal order minimum prices for their route sales in a Federal order marketing area. Since Clark County, Nevada, was in the Arizona-Las Vegas marketing area at the time of enactment, April 11, 2006, any handlers located in this area will be required to pay Federal order minimum prices to the Arizona-Las Vegas order for sales of packaged fluid milk into non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for milk, excluding plants pooled on another Federal order, plants subject to minimum pricing under State regulations, exempt plants, and producer-handlers with less than three-million pounds of route distribution.

With regard to the records and facilities, the Milk Regulatory Equity Act of 2005 provides that notwithstanding any other provision of section 8c of the AMAA, or the amendments made by the 2005 Act, a milk handler (including a producer-handler or a producer operating as a handler) that is subject to regulation is required to comply with the requirements of 7 CFR 1000.27, or a successor regulation, relating to handler responsibility for records or facilities. The information collection and recordkeeping requirements contained in 7 CFR 1000.27, as well as the information collection requirements in each of the ten Federal milk marketing orders has been previously approved by the Office of Management and Budget under the provision of Title 44 U.S.C. chapter 35 and been assigned OMB Control No. 0581–0032.

The Milk Regulatory Equity Act of 2005 (Act) further provides that the amendments made by that Act are to take effect on the first day of the first month beginning more than 15 days after the date of the enactment of this Act. The Act was signed into law on April 11, 2006, and therefore, the effective date of the amendments to the milk marketing orders is May 1, 2006. To accomplish the expedited implementation of the amendments, the Act provides that the Secretary of Agriculture shall include in the pool distributing plant provisions of each Federal milk marketing order a provision that a handler, subject to the Act, will be fully regulated by the order in which the handler's distributing plant is located. Lastly, the Act provides that the amendments shall not be subject to a referendum under section 8c(19) the AMAA (7 U.S.C. 608c(19)).

This final rule is issued in conformance with the requirements Executive Order 12866. The amendments to the orders provided for herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. The amendments do not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The AMAA, as amended (7 U.S.C. 604–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handlers is an habitant, or has a principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this final rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacture is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Producer-handlers are defined as dairy farmers that process only their own milk production. These entities must be dairy farmers as a pre-condition to operating processing plants as producer-handlers. The size of the dairy farm determines the production level of the operation and is the controlling factor in the capacity of the processing plant and possible sales volume associated with the producer-handler entity. Determining whether a producer-handler is considered a small or large business must depend on its capacity as a dairy farm where a producer-handler with annual gross revenue in excess of $750,000 is considered a large business.

For the month of January 2006, there were 38,279 dairy farmers were pooled on the Federal order system. Of the total, 35,503, or 93 percent were considered small businesses. During the same month, 399 plants were regulated by or reported their milk receipts to their respective Market Administrator. Of the total, 204, or 51 percent were

considered small businesses. There are approximately 78 producer-handlers in the Federal milk order program. Of this number, fewer than 5 of these producer-handlers would be considered large enough to potentially be affected by this final rule.

This final rule amends the current ten Federal milk marketing orders to: (1) Require fluid milk handlers located in Federal milk marketing order areas as described on the date of enactment, but not regulated by any Federal milk marketing order, to pay Federal order minimum prices to the Federal order where the handler is physically located for sales of packaged fluid milk into non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for milk, excluding plants pooled on another Federal order, plants subject to minimum pricing under State regulations, exempt plants, and producer-handlers with less than three-million pounds of route distribution; (2) Partially or fully regulate any producer-handler that has total distribution of Class I products of own-farm production in excess of three-million pounds and distributes fluid milk in the Arizona-Las Vegas marketing order area; and (3) Remove the State of Nevada from the marketing area definition of any Federal order. These provisions assure that dairy farmers and handlers receive identical treatment regardless of size of their business.

The established criteria are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing fluid milk products. Therefore, the final rule will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that this final rule would have no impact on reporting, record keeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements are necessary.

This final rule does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Further, given the provisions of the Milk Regulatory Equity Act of 2005, it is found, upon good cause, that further public procedure is unnecessary and impracticable and it is necessary and in the public interest to make this final rule effective May 1, 2006.

Accordingly, pursuant to the provisions of the Milk Regulatory Equity Act of 2005, the ten Federal milk marketing orders are amended as specified herein and this final rule becomes effective on May 1, 2006.

List of Subjects in 7 CFR Part 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as hereby amended.

■ For the reasons set forth in the preamble and under the authority set for in Public Law 109–215, 120 Stat. 328, 7 CFR parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 are amended as follows:

■ 1. The authority citation for 7 CFR parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 is revised to read as follows:

Authority: 7 U.S.C. 601–674, 7253; Pub. L. 109–215, 120 Stat. 328.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

■ 2. Add § 1001.7(d) to read as follows:

§ 1001.7 Pool plant.

* * * * *

(d) Any distributing plant, located within the marketing area as described on April 11, 2006, in § 1001.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1001.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1001.10 with less than three million pounds during the month of route dispositions and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved].

* * * * *

■ 3. Add § 1001.10(f) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 4. Section 1005.7 is amended by revising introductory text, redesignating paragraph (g) to (h) and adding new paragraph (g) to read as follows:

§ 1005.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, a unit of plants as specified in paragraph (e) of this section, or a plant specified in paragraph (g) of this section but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

* * * * *

(g) Any distributing plant other than a plant qualified as a pool plant pursuant to § 1005.7(a) or paragraph (b) of this section or § ____.7(b) of any other Federal milk order or § 1005.7(e) or § 1000.8(a) or § 1000.8(e); located within the marketing area as described on April 11, 2006, in § 1005.2, from which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusion:

(1) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(2) A producer-handler described in § 1005.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

* * * * *

■ 5. Add § 1005.10(e) to read as follows:

§ 1005.10 Producer-handler.

* * * * *

(e) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 6. Section 1006.7 is amended by revising introductory text and adding paragraph (h) to read as follows:

§ 1006.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, a unit of plants as specified in paragraph (e) of this section, or a plant specified in paragraph (h) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

* * * * *

(h) Any distributing plant, located within the marketing area as described on April 11, 2006, in § 1006.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1006.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1006.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved].

■ 7. Add § 1006.10(e) to read as follows:

§ 1006.10 Producer-handler.

* * * * *

(e) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 8. Section 1007.7 is amended by revising introductory text and adding paragraph (h) to read as follows:

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, a unit of plants as specified in paragraph (e) of this section, or a plant specified in paragraph (h) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

* * * * *

(h) Any distributing plant, located within the marketing area as described on April 11, 2006, in § 1007.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that

require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1007.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1007.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

■ 9. Add § 1007.10(e) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(e) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

■ 10. In § 1030.7 revise paragraphs (c)(1)(i) and (c)(2) and add paragraph (d) to read as follows:

§ 1030.7 Pool plant.

* * * * *

(c) * * *

(1) * * *

(i) Pool plants described in § 1030.7(a), (b), (d), and (e);

* * * * *

(2) The operator of a supply plant located within the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin and the Upper Peninsula of Michigan may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to §§ 1000.9(c) or 1030.13(c) to plants described in paragraphs (a), (b), (d) and (e) of this section. Handlers may not use shipments pursuant to § 1000.9(c) or § 1030.13(c) to qualify plants located outside the area described above.

* * * * *

(d) Any distributing plant, located within the marketing area as described on April 11, 2006 in § 1030.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1030.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1030.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved]

* * * * *

■ 11. Add § 1030.10(f) to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

■ 12. Revise § 1030.13(d)(3) to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) * * *

(3) The quantity of milk diverted to nonpool plants by the operator of a pool plant described in § 1030.7(a), (b) or (d) may not exceed 90 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1030.12(b)) including milk diverted pursuant to § 1030.13; and

* * * * *

■ 13. Revise § 1030.55(a) and (b) to read as follows;

§ 1030.55 Transportation credits and assembly credits.

(a) Each handler operating a pool distributing plant described in § 1030.7(a), (b), (d), or (e) that receives bulk milk from another pool plant shall receive a transportation credit for such milk computed as follows:

* * * * *

(b) Each handler operating a pool distributing plant described in § 1030.7(a), (b), (d), or (e) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (c) of this section. The credit shall be computed by

multiplying the hundredweight of milk eligible for the credit by $0.08.

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

■ 14. Section 1032.7 is amended by revising introductory text and adding paragraph (i) to read as follows:

§ 1032.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, or a plant specified in paragraph (i) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (d) and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

* * * * *

(i) Any distributing plant, located within the marketing area as described on April 11, 2006 in § 1032.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1032.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1032.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved]

* * * * *

■ 15. Add § 1032.10(f) to read as follows:

§ 1032.10 Producer-handler.

* * * * *

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or 1000.76(a).

■ 16. Revise § 1032.13(d)(2) and (3) to read as follows:

§ 1032.13 Producer milk.

* * * * *

(d) * * *

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of August through February, and not more than 85 percent during the months of March through July, provided that not less than 20 percent of such receipts in the months of August through February and 15 percent of the remaining month's receipts are delivered to plants described in § 1032.7(a), (b) or (i);

(3) Receipts used in determining qualifying percentages shall be milk transferred to or diverted to or physically received by a plant described in § 1032.7(a), (b) or (i) less any transfer or diversion of bulk fluid milk products from such plants;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

■ 17. Section 1033.7 is amended by revising introductory text and adding paragraph (j) to read as follows:

§ 1033.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, or a plant specified in paragraph (j) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) through (f) of this section are subject to modification pursuant to paragraph (g) of this section:

* * * * *

(j) Any distributing plant, located within the marketing area as described on April 11, 2006, in § 1033.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1033.7(a) or (b);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1033.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved]

■ 18. Add § 1033.10(f) to read as follows:

§ 1033.10 Producer-handler.

* * * * *

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or

transfer of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ 19. In § 1124.7 revise paragraph (d) introductory text and (d)(1) and add paragraph (e) to read as follows:

§ 1124.7 Pool plant.

* * * * *

(d) A manufacturing plant located within the marketing area and operated by a cooperative association, or its wholly owned subsidiary, if, during the month, or the immediately preceding 12-month period ending with the current month, 20 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other that Class I) at plants specified in paragraph (a), (b), or (e) of this section either directly from farms or by transfer from supply plants operated by the cooperative association, or its wholly owned subsidiary, and from plants of the cooperative association, or its wholly owned subsidiary, for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), (c), or (e) of this section or under comparable provisions of another Federal order; and

* * * * *

(e) Any distributing plant, located within the marketing area as described on April 11, 2006, in § 1124.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1124.7(a) or (b);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1124.10 with less than three million pounds during the month of route dispositions and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved]

* * * * *

■ 20. Add § 1124.10(f) to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

■ 21. Section 1126.7 is amended by revising introductory text and adding paragraph (h) to read as follows:

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, a unit of plants as specified in paragraph (e) of this section, or a plant specified in paragraph (h) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

* * * * *

(h) Any distributing plant, located within the marketing area as described on April 11, 2006, in § 1126.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1126.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1126.10 with less than three million pounds during the month of route disposition and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved]

■ 22. Add § 1126.10(f) to read as follows:

§ 1126.10 Producer-handler.

* * * * *

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund

provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 of this chapter or § 1000.76(a).

PART 1131—MILK IN THE ARIZONA–LAS VEGAS MARKETING AREA

■ 23. Revise § 1131.2 to read as follows:

§ 1131.2 Arizona-Las Vegas marketing areas.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Arizona

All of the State of Arizona.

■ 24. In § 1131.7 revise paragraphs (d) introductory text and (d)(1) and add paragraph (h) to read as follows:

* * * * *

§ 1131.7 Pool plant.

* * * * *

(d) A plant located within the marketing area and operated by a cooperative association if, during the month, or the immediately preceding 12-month period ending with the current month, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other that Class I) at plants specified in paragraph (a), (b), or (h) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), (c), or (h) of this section or under comparable provisions of another Federal order; and

* * * * *

(h) Any distributing plant, located within the marketing area as described on April 11, 2006, in § 1131.2;

(1) From which there is route disposition and/or transfers of packaged fluid milk products in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk provided that 25 percent or more of the total quantity of fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) is disposed of as route disposition and/or is transferred in the form of packaged fluid milk products to other plants. At least 25 percent of such route disposition and/or transfers, in aggregate, are in any non-Federally regulated marketing area(s) located within one or more States that require handlers to pay minimum prices for raw milk. Subject to the following exclusions:

(i) The plant is described in § 1131.7(a), (b), or (e);

(ii) The plant is subject to the pricing provisions of a State-operated milk pricing plan which provides for the payment of minimum class prices for raw milk;

(iii) The plant is described in § 1000.8(a) or (e); or

(iv) A producer-handler described in § 1131.10 with less than three million pounds during the month of route dispositions and/or transfers of packaged fluid milk products to other plants.

(2) [Reserved].

* * * * *

■ 25. Add § 1131.10(f) to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in § 1131.7 or § 1000.76(a).

Dated: April 25, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–4040 Filed 4–27–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

RIN 0710–AA63

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is amending the regulations for lockage operations at Bonneville Lock and Dam and amending the regulations which establish the restricted areas at Little Goose Lock and Dam. The Corps is making corrections and adjustments to the lockage control, signals, and permissible dimensions of vessels for Bonneville Lock and Dam. These changes correct language for the new replacement lock. For the Little Goose Lock and Dam the Corps is making adjustments in the upstream channel restricted area boundary to provide a recreational craft corridor along the north shoreline. This will provide better boat ramp access in support of the small craft portage route and reduce interference between fishermen and the boat ramp.

DATES: The effective date is May 31, 2006.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–NWD, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hall, Program Manager, CECW–NWD at (202) 761–4717, or Brian Schmidtke, (503) 808–4333 for Bonneville Lock and Dam or Ms. Ann

Glassley at (509) 527–7115 for Little Goose Lock and Dam.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 4, 7, and 28 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps amends the regulations in 33 CFR Part 207.718. The proposed rule was published in the October 24, 2005, issue of the **Federal Register** (70 FR 61402), and no comments were received in response to that notice.

The Corps amends the regulations at 33 CFR 207.718 (b), (d)(3), (e), (f)(1), (j) and (w)(7). Paragraph (b) changes the description of the limits of the approach channels at Bonneville Lock and Dam. Paragraph (d)(3) deletes the Bonneville Lock and Dam specific exception referring to vessels entering under an amber light. This provides consistent entering and exiting signals for the entire Columbia/Snake lock and dam system.

Paragraph (e) had several changes. The amended paragraph deletes the Bonneville specific exception on useable chamber size. The modified paragraph adds text detailing the Bonneville Lock and Dam staff gauges, sill elevations, and how to compute depth over the sill, since Bonneville's staff gauges are different from all other Columbia/Snake lock and dams that directly read depth over the sill. The amended paragraph replaces a sentence referring to vessel draft so it refers to depth over the sill and not staff gauge readings. This change makes the sentence correct for all Columbia/Snake locks including Bonneville. The revised paragraph corrects the minimum depth over the sill at Bonneville Lock and Dam at 19 feet. The amended paragraph deletes three sentences concerning rearrangement of tows specifically at Bonneville Lock and Dam, and it deletes one sentence concerning inundation of the downstream guide wall at Bonneville Lock and Dam.

Paragraph (f)(1) corrects grammar by changing the last word from ''sections'' to ''section.'' Paragraph (j) includes grammatical changes and corrects and details the location of the downstream mooring facility at Bonneville Lock and Dam. This new paragraph also deletes reference to vessels being allowed to lay-to against the upstream guide wall at Bonneville Lock and Dam. Paragraph (w)(7) revises the upstream restricted area of Little Goose Lock and Dam to allow less interference between fisherman and the boat ramp on the north river bank as more small craft portaging is expected coinciding with the Lewis and Clark bicentennial.

The regulation governing the navigation locks and approach channels, Columbia and Snake Rivers, Washington and Oregon, 33 CFR 207.718 was adopted on January 23, 1978 (43 FR 3115). The last amendment to 33 CFR 207.718 January 26, 2000 (65 FR 4125).

This rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the Corps of Engineers certifies that this rule would not have a significant impact on small business entities.

List of Subjects in 33 CFR Part 207

Navigation (water), Vessels, Water Transportation, Danger Zones.

Dated: April 24, 2006.

Gerald W. Barnes,

Chief, Operations, Directorate of Civil Works.

■ For the reasons stated above, the Corps amends 33 CFR part 207 as follows:

PART 207—NAVIGATION REGULATIONS

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

■ 2. Amend § 207.718 by revising paragraphs (b), (d)(3), (e), (f)(1), (j) and (w)(7) to read as follows.

§ 207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oreg. and Wash.

* * * * *

(b) *Lockage control.* The Lock Master shall be charged with immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. Upstream and downstream approach channels extend to the end of the wing or the guide wall, whichever is longer. At Bonneville lock the upstream approach channel extends to the mooring tie offs at Fort Rains and the downstream approach channel extends to the downstream tip of Robins Island. The Lock Master shall demand compliance with all laws, rules and regulations for the use of the lock and lock area and is authorized to issue necessary orders and directions, both to employees of the Government or to other persons within the limits of the lock or lock area, whether navigating the lock or not. Use of lock facilities is contingent upon compliance with regulations, Lock Master instructions and the safety of people and property.

* * * * *

(d) * * *

(3) *Entering and exit signals.* Signal lights are located outside each lock gate. When the green (go) light is on, all vessels will enter in the sequence prescribed by the Lock Master. When the red (stop) light is on, the lock is not ready for entrance and vessels shall stand clear. In addition to the above visual signals, the Lock Master will signal that the lock is ready for entrance by sounding one long blast on the lock air horn. The Lock Master will signal that the lock is ready for exit by lighting the green exit light and sounding one short blast on the air horn.

* * * * *

(e) *Permissible dimensions of vessels.* Nominal overall dimensions of vessels allowed in the lock chamber are 84 feet wide and 650 feet long. Depth of water in the lock depends upon river levels which may vary from day to day. Staff gauges showing the minimum water level depth over gate sills are located inside the lock chamber near each lock gate and outside the lock chamber near the end of both upstream and downstream guide walls, except at Bonneville where the staff gauges show water levels in feet above MSL and are located on the southern guide walls at the upstream and downstream miter gates. Bonneville's upstream sill elevation is 51 feet MSL and the downstream sill elevation is −12 feet MSL. Depth over sill at Bonneville is determined by subtracting the sill elevation from the gauge reading. Vessels shall not enter the navigation lock unless the vessel draft is at least one foot less than the water depth over the sill. Information concerning allowable draft for vessel passage through the locks may be obtained from the Lock Master. Minimum lock chamber water level depth is 15 feet except at Ice Harbor where it is 14 feet and at Bonneville where it is 19 feet. When the river flow at Lower Granite exceeds 330,000 cubic feet per second the normal minimum 15-foot depth may be decreased to as little as eight feet.

* * * * *

(f) * * *

(1) When a recreational vessel lockage schedule is in effect, at the appointed time for lockage of recreation craft, recreation craft shall take precedence; however, commercial vessels may be locked through with recreation craft if safety and space permit. At other than the appointed time, the lockage of commercial and tow vessels shall take precedence and recreational craft may (only) lock through with commercial vessels only as provided in paragraph (h) of this section.

* * * * *

(j) *Waiting for lockage.* Vessels waiting for lockage shall wait in the clear outside of the lock approach channel, or contingent upon permission by the Lock Master, may at their own risk, lie inside the approach channel at a place specified by the Lock Master. At Bonneville, vessels may at their own risk, lay-to at the downstream moorage facility on the north shore downstream from the north guide wall provided a 100-foot-wide open channel is maintained.

* * * * *

(w) * * *

(7) *At Little Goose Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 60°37′ true for a distance of 676 yards; thence 345°26′ true for a distance of 494 yards; thence 262°37′47″ true to the dam embankment shoreline. The downstream limits commence 512 yards downstream and at right angles to the axis of the dam on the south shore; thence parallel to the axis of the dam to the north shore. Signs designate the restricted areas.

* * * * *

[FR Doc. 06–4064 Filed 4–28–06; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–8163–8]

Implementation of the Great Lakes Legacy Act of 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; Notice of Implementation Policy.

SUMMARY: This action is intended to outline EPA's process for identification, evaluation, selection, and implementation of projects for funding under the Great Lakes Legacy Act of 2002 (also referred as GLLA or the Legacy Act). The Legacy Act authorizes the appropriation of $50 million annually for fiscal years 2004–2008 for contaminated sediment remediation projects and provides EPA with a unique approach for addressing contaminated sediment problems in Great Lakes Areas of Concern. The Act also authorizes smaller amounts of funding for other activities; this action pertains only to sediment remediation project selection and implementation. This action provides information to those interested in submitting cost-share, sediment remediation projects to EPA for funding under the Legacy Act.

DATES: Effective on May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Ireland, Technical Assistance and Analysis Branch, Environmental Protection Agency, Great Lakes National Program Office 77 West Jackson Blvd. G–17J, Chicago, IL 60604–3590, telephone number (312) 886–8121; fax number (312) 353–2018, *http://www.epa.gov/greatlakes*.

SUPPLEMENTARY INFORMATION:

I. General Information

Affected Entities: Federal agencies and public and private non-Federal sponsors eligible to have cost-shared projects approved under the Great Lakes Legacy Act of 2002.

II. Background

Contaminated sediments have been a problem in the Great Lakes for several decades. It has been reported that polluted sediment is the largest major source of contaminants entering the food chain from Great Lakes Rivers and harbors. This includes most of the current 41 Areas of Concern (AOCs) designated by the United States and Canada, the Parties to the Great Lakes Water Quality Agreement. Over the past several years, Great Lakes stakeholders have moved forward in the pursuit of sediment remediation through a variety of mechanisms (enforcement, voluntary partnerships, etc.). From 1997–2004, approximately 3.7 million cubic yards of contaminated sediment were remediated from the U.S. Great Lakes Basin. Roughly 76 million cubic yards of contaminated sediment remain.

Congress passed the Great Lakes Legacy Act of 2002 on November 12, 2002 and President George W. Bush signed the Legacy Act into law on November 27, 2002 (Pub. L. 107–303). The Legacy Act authorizes the appropriation of $50 million annually for fiscal years 2004–2008 for contaminated sediment remediation projects and provides EPA with a unique approach for addressing contaminated sediment problems in Great Lakes AOCs. The Act also authorizes smaller amounts of funding for other activities; this action pertains only to sediment remediation project selection and implementation.

In order to be an eligible project under the Legacy Act, a project must be carried out in an AOC located wholly or partially in the United States and the project must:

1. Monitor or evaluate contaminated sediment;
2. Implement a plan to remediate contaminated sediment; or
3. Prevent further or renewed contamination of sediment.

The Legacy Act program is implemented through Project Agreements, which are binding cost-sharing agreements between the Great Lakes National Program Office (GLNPO) and a cooperating agency or entity. Project selection decisions will be made in consultation with the USEPA Office of Water.

Legacy Act authorizing language places only limited restrictions on the types of entities (non-Federal sponsors) that may potentially enter into a Project Agreement with GLNPO. This provides the potential for entering into agreements with public and private entities, including not-for-profit organizations. It is the ultimate goal of GLNPO to work cooperatively with all qualifying potential non-Federal sponsors that have submitted project proposals under the Legacy Act in order to develop projects that are technically sound, beneficial to the environment, supported by the local community, and able to be completed in an expeditious manner. It is important to maintain the necessary flexibility in evaluating project proposals to achieve this goal.

In situations where other sources of funding are available (e.g., Water Resources Development Act—WRDA) or other mechanisms to complete the project are available (e.g., Superfund or other enforcement or regulatory programs), GLNPO will work with these existing programs, where appropriate, to add value in a way that maximizes the overall benefit to the environment.

In cases where enforcement or regulatory actions are pending, or underway, GLNPO will work and coordinate with the applicable enforcement or regulatory program on a case-by-case basis to determine the proper role, if any, for the Legacy Act to provide a value-added component to the project. In some cases, identifying a role for the Legacy Act may not be possible, if a proposed action is more appropriately accomplished by another program or agency.

III. Project Selection

The Legacy Act specifically directs the Administrator to give priority to projects that:

1. Constitute remedial action for contaminated sediment;
2. Have been identified in a Remedial Action Plan (RAP) and are ready to be implemented;
3. Use an innovative approach, technology, or technique that may provide greater environmental benefits,

or equivalent environmental benefits at a reduced cost; or

4. Include remediation to be commenced not later than 1 year after the date of receipt of funds for the project.

EPA will use a scoring system to evaluate how well applications meet program priorities. In addition to the priorities listed above, the Agency will score applicants based on criteria that place greater weight on projects meeting Category 1 requirements (see Section V, Step 2: Project Evaluation Process) in order to allocate limited resources and facilitate coordination with requirements of other Agency programs. A Category 2 application would receive fewer points than a Category 1, and so on for Categories 3 and 4. The Agency will also award additional points to applications that exceed the minimum non-Federal cost-share requirements for their category (see Section IV below) and those that will result in the delisting of an AOC.

IV. Cost Share Requirement

The Legacy Act requires a minimum of a 35% non-Federal cost share for all projects carried out under the Legacy Act. The Legacy Act also requires a 100% non-Federal share for operation and maintenance of a project. The non-Federal cost share of a project may include the value of in-kind services. Additionally, the Legacy Act provides that the non-Federal cost share ''may include monies paid pursuant to, or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree.'' The Legacy Act also states that the non-Federal cost share ''may not include any funds paid pursuant to, or the value of any in-kind service performed under, a unilateral administrative order or court order.''

EPA believes project sponsors have substantial non-Federal cost-share responsibilities and has set the non-Federal cost-share rate minimums accordingly, by project category (see Section V, Step 2: Project Evaluation Process).

The underlying principle that guides our decision-making is that GLNPO will require at least a 35% non-Federal cost share in those cases where no responsible parties are clearly identified (the action could not be required of any responsible party). In other cases, where Agency regulatory and/or enforcement programs determine that the non-Federal sponsor may have some clear responsibility, GLNPO will require a substantially higher contribution (minimum of 40–50%). However, for all potential projects, GLNPO will coordinate and work with other applicable programs (Federal, State, tribal, and local), including regulatory programs, to ensure that the GLLA is not providing funding in a situation where other programs are more appropriate.

EPA's approach to non-Federal cost share with regard to the Legacy Act projects is as follows. The non-Federal cost share does not include costs incurred prior to initiation of a Legacy Act project. Costs incurred after project initiation but within the context of a consent decree in place at the time of project initiation can be included in the non-Federal cost share.

V. Project Identification, Evaluation and Selection

GLNPO has a three stage process in place for the identification, evaluation, and selection of projects for Great Lakes Legacy Act funding. This process aims to merge the statutory priorities identified in the Legacy Act along with considerations of fiscal responsibility and technical merit. The process includes:

- Step 1: Project Identification
- Step 2: Project Evaluation
- Step 3: Project Selection and Funding

Step 1: Project Identification:

Projects are identified through the release of a Request for Projects (RFP). The first RFP was released in January 2004 to solicit projects to be considered for funding under the Legacy Act. This RFP closed on March 31, 2004 (*http://www.epa.gov/glla/rule/rfp.html*). GLNPO will issue a new RFP incorporating this action within 90 days following publication of this action in the **Federal Register** (this new RFP will then replace the initial RFP at the web address above). However, GLNPO remains open to the receipt of additional proposals at any time.

The potential non-Federal project sponsors are responsible for submitting a project proposal using the guidelines provided in the RFP.

Step 2: Project Evaluation Process:

Upon receipt of a project proposal, the proposal undergoes a two-stage evaluation process consisting of a Stage 1: ''Minimum Requirements Check'' (Stage 1 Minimum Requirements Check *http://www.epa.gov/glla/rule/min_req.html*) and a Stage 2: ''Strength of Proposal'' (Stage 2 Strength of Proposal *http://www.epa.gov/glla/rule/str_pro.html*).

In Stage 1, projects are evaluated against several minimum requirements that reflect statutory requirements of the GLLA, including:

1. Project scope as identified under the Legacy Act (*e.g.*, monitors or evaluates contaminated sediments, remediates contaminated sediments, or prevents further contamination of contaminated sediments),

2. Location of the project within a U.S. AOC,

3. Identification of a cumulative 35% minimum cost share from (a) non-Federal project sponsor(s), and

4. Completion or commencement of a site assessment and an evaluation of remedial alternatives (applies only to remediation projects).

All projects that successfully meet the statutory requirements of the Legacy Act pass the Stage 1 review and are then subject to a more complete Stage 2 evaluation process. The Stage 2 review process is a thorough technical evaluation process that includes representatives from U.S. EPA enforcement and regulatory programs, the U.S. Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and the U.S. Fish and Wildlife Service. These representatives form the Technical Review Committee (TRC) for each project. This multi-disciplinary, multi-agency review team provides for broad technical and enforcement/regulatory input into the review process.

The TRC evaluates each project for:

1. ''Strength of Proposal'' (see *http://www.epa.gov/glla/rule/str_pro.html*), and

2. Overlap with on-going enforcement or regulatory actions or other Federal activities (Water Resources Development Act (WRDA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), etc.), and State, local or tribal efforts.

All sediment remediation proposals are first subjected to a comprehensive written review by the TRC. GLNPO consolidates comments from the TRC and provides them to the applicant. The applicants are then required to provide a formal, oral presentation and a revised written proposal that addresses each of the TRC's comments.

The major functions of the TRC are first, to identify any technical deficiencies in the proposed project, and then to highlight any potential issues regarding ongoing or planned enforcement or regulatory activities at the site. The technical deficiencies identified by the TRC can range from relatively minor comments regarding the need for small modifications to the project design or changes to the long-term sampling plan, to more major issues regarding the need for additional sediment characterization at the site or the viability of the proposed remedial strategy, that could potentially require

re-design of the remediation. Non-Federal sponsors for the projects are given an opportunity to respond to any deficiencies noted by the TRC during the Stage 2 review process. Based on the extent of the deficiencies identified and the speed of the applicant in addressing the deficiencies, the Stage 2 process could last from several weeks to several years.

To aid in the Stage 2 evaluation process, projects are assigned to one or up to four categories, with input from applicable regulatory and enforcement programs, including coordination with the Office of Enforcement and Compliance Assurance (OECA) staff to determine if enforcement or regulatory actions are pending or underway at each proposed project site. In those cases where a project includes more than one category, GLNPO will determine the appropriate category and the applicable cost share for each component of the project, and pro-rate the overall cost share requirement proportional to the project costs from each category. For all project categories, GLNPO will seek to evaluate the extent to which proposed projects address the restoration of beneficial uses, per the Great Lakes Water Quality Agreement.

Category 1: Formal enforcement/regulatory evaluation completed, no action is anticipated by any governmental body against any entity. No restrictions on GLLA implementation. GLNPO will require a non-Federal cost share minimum of 35 percent.

Category 2: No enforcement, regulatory or CERCLA response actions are pending. GLNPO will coordinate with enforcement/regulatory programs to verify that no actions are pending or planned for the site. In cases where the non-Federal sponsor is a nonliable public entity, the non-Federal cost would typically be 35%. Additionally, it is possible that through consultation with Superfund, projects may be identified that although Superfund has the potential to conduct the project, it is more appropriate to use the Legacy Act. For projects in this situation, GLNPO will require a non-Federal cost share of greater than 35%.

Category 3: A decision document under Superfund, or a settlement agreement under another applicable state or Federal authority, has been signed. GLNPO will not provide any funding for implementation of the decision document or settlement agreement. Instead, GLNPO may use GLLA funding for the portions of these sites not addressed by the Superfund decision document or settlement agreement where enforcement or regulatory actions are not anticipated. GLLA may be used to provide betterments or enhancements to the required elements of the decision document to address the U.S. Government's commitment under the Great Lakes Water Quality Agreement. For Category 3 projects, the non-Federal sponsor at these sites will be required to contribute at least 40%.

Category 4: Enforcement, regulatory or CERCLA response actions pending but no settlement has been reached. If Legacy Act funds are used for a project where enforcement, regulatory or CERCLA response actions are pending but no settlement has been reached, GLNPO will work and coordinate with the applicable enforcement or regulatory program to determine the appropriate project delineation and cost distribution between the Legacy Act and the other program. The appropriate GLLA share for conducting a project that meets the combined objectives of the enforcement program and the Great Lakes Water Quality Agreement will be determined through discussions with the applicable enforcement authority. The non-Federal sponsor at these sites will be required to contribute at least 50%.

GLNPO utilizes TRC input to work with the applicant to modify proposed projects and ensure that the proposed project meets the technical requirements for implementation. Once this step is complete, GLNPO compiles information from the Stage 2 review for presentation to the Great Lakes National Program Manager in the project selection and funding process. As part of this compilation process, GLNPO completes a Great Lakes Legacy Act Scoring Sheet (Attachment A; *http://www.epa.gov/glla/rule/scor_sheet.html*) for each project. The scoring sheet represents a summary of:

1. ''Strength of Proposal'' (see *http://www.epa.gov/glla/rule/str_pro.html*);
2. Success in addressing statutory priorities of the Legacy Act (*i.e.*, identified in a RAP and ready to be implemented, includes sediment remediation to be commenced within one year, and use of an innovative approach, technology, or technique);
3. Other relevant policy factors (*e.g.*, including presence of Potentially Responsible Party (PRP), project category, eligibility for other cleanup programs, the ability to delist an AOC at the end of the project, and the non-Federal contribution).

The Step 2 evaluation process assigns a score based on relevant factors that allows the decision-maker to identify projects that are technically sound and represent the best use of program resources.

Step 3: Project Selection and Funding:

In Step 3, every six (6) months, or at other appropriate intervals, but never less frequently than once each year, GLNPO prepares a project ranking based on scores computed on a Great Lakes Legacy Act Scoring Sheet (Attachment A) for all pending projects. GLNPO then provides this ranking, along with a Proposal Scoring and Summary Information sheet (*http://www.epa.gov/glla/rule/scor_summ_sheet.html*) and a ''Minimum Requirements Check'' (*http://www.epa.gov/glla/rule/min_req.html*), a ''Strength of Proposal'' (*http://www.epa.gov/glla/rule/str_pro.html*), and a Great Lakes Legacy Act Scoring Sheet to the Great Lakes National Program Manager who, in consultation with the USEPA Office of Water, and taking into account available GLLA funding, selects projects for which formal Project Agreement (PA) negotiations will be initiated.

Given the complications that can occur when planning and implementing a sediment remediation project, GLNPO continually evaluates each proposed project. A project's ranking may evolve or change through several ranking cycles as an applicant addresses EPA concerns with its application or other project circumstances change.

Once a project has been selected for potential funding, GLNPO and the Office of Regional Counsel (ORC) begin Project Agreement discussions with the non-Federal sponsor of the project. The PA is a legal agreement between GLNPO and the non-Federal sponsor that memorializes each entity's legal and financial responsibilities and requirements. GLNPO, ORC and Headquarters staff, as required, will coordinate closely during PA development to ensure that legal, financial, and technical requirements are clearly identified. If complications arise during the PA discussions that result in delays in signing the agreement, the project may be reevaluated to determine the potential impact of the delays on project schedule; and therefore, these complications may also impact project priority.

The signing of a PA represents an Agency decision to fund a Legacy Act project. It is important to note that no official funding decision is made prior to PA signing, and, therefore, Legacy Act funds remain available for all potential projects until a PA is signed. Projects will be periodically evaluated and compared until a PA is signed.

Once a PA is signed, the implementation phase of the project can begin, including, but not limited to,

issuing a work order with an EPA contractor or entering into an Interagency Agreement with the Corps of Engineers. It is GLNPO's goal to work with the non-Federal sponsors, other Federal agencies, other EPA program offices, state and local governments, and the public to implement the Legacy Act in order to clean up contaminated sediment sites throughout the Great Lakes, and ultimately begin delisting AOCs, under provisions of the Great Lakes Water Quality Agreement. Project management and oversight will be performed by GLNPO, in consultation with the USEPA Office of Water. Each project will have a GLNPO project manager who will convene a project management team consisting of representatives from the non-Federal sponsor, the EPA contractor, and appropriate project personnel and other involved stakeholders. The project agreement will not relieve any third party from any liability that may arise under CERCLA, RCRA, TSCA, or other Federal environmental statutes.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this action is not subject to notice and comment requirements pursuant to 5 U.S.C. 553(a)(2) and 553(b)(A), it is not subject to the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not have Tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 under Executive Order 12866. This action does not involve technical standards; 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 action 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.*, generally provides that before certain actions may take affect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this final action contains legally binding requirements, it is subject to the Congressional Review Act, and EPA will submit this action in its report to Congress under the Act.

Attachment A—Great Lakes Legacy Act Scoring Sheet

Project #:
Project Title:

Score the project for each evaluation criterion listed below, with higher scores representing a more favorable rating. Provide narrative rationale (4–5 sentences) for total score in the space provided.

1. Measurable environmental results/risk reduction is expected upon project completion, potential for delisting Areas of Concern, soundness of approach, reasonableness of costs, and probability of success. (0 = Low, 35 = High)
Score _____

2. Project identified in Remedial Action Plan (RAP). (0 = Low, 5 = High)
Score _____

3. Project will use an innovative approach, technology, or technique that may provide equivalent environmental benefits at a reduced cost or greater environmental benefit. (0 = Low, 5 = High)
Score _____

4. Probability (based on best professional judgment) that remediation will occur not later than 1 year after the date of the receipt of funds for the project. (0 = Low, 5 = High)
Score _____

5. The non-Federal sponsor will exceed the minimum non-Federal cost-share requirements for its respective project category (exceeds category target by 10% = 4 points, 20% = 8 points, 30% = 12 points, and greater than 40% = 15 points; EPA will interpolate between these values if percentages differ from the above numbers).
Score _____

6. Project category (Category 1 = 35 points, Category 2 = 25 points, Category 3 = 15 points, and Category 4 = 5 points). Points will be apportioned for multiple-category projects.
Score _____
TOTAL SCORE _____
Provide Narrative Discussion

Dated: April 25, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–4079 Filed 4–28–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2005–09; Corrections; Docket FAR–2006—0020]

Federal Acquisition Regulation; Corrections

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrections.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing corrections to FAR Case 2004–031, Fast Payment Procedures (Item IX), which was published in the **Federal Register** at 71 FR 20308 and 20309, April 19, 2006.

DATES: *Effective Date*: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to

status or publication schedules. Please cite FAC 2005–09; Corrections.

Corrections

In the final rule document appearing in the issue of April 19, 2006:

1. On page 20308, third column, first paragraph under ''Background,'' revise the second sentence to read ''No comments were submitted and the rule is being converted to a final rule without change from the proposed rule.''

52.213–1 [Corrected]

■ 2a. On page 20309, first column, at 52.213–1 revise the date of the clause to read ''(MAY 2006)'';

■ 2b. In the second column, in paragraph (e) revise the paragraph heading to read ''*FAST PAY container identification.*''

Dated: April 25, 2006.

Laurieann Duarte,

Supervisor, Regulatory Secretariat.

[FR Doc. 06–4068 Filed 4–28–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 042606A]

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2006 total allowable catch (TAC) of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI under § 679.20(d)(1)(iii) on April 7, 2006 (71 FR 18684, April 12, 2006).

NMFS has determined that as of May 1, 2006, approximately 254 metric tons of Pacific cod remain in the 2006 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully use the 2006 TAC of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. The opening is effective 1200 hrs, A.l.t., May 1, 2006, through 2400 hrs, A.l.t., December 31, 2006.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 14, 2006.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 2006.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–4082 Filed 4–26–06; 3:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 042606B]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2006 B season total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective May 1, 2006, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 B season allowance of the Pacific cod TAC specified for vessels using jig gear in the BSAI is 696 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) and the adjustment of the Pacific cod TACs in the BSAI on March 14, 2006 (71 FR 13777, March 17, 2006), for the period 1200 hrs, A.l.t., April 30, 2006, through 1200 hrs, A.l.t., August 31, 2006. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A).

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 400 mt of the B season apportionment of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(A) and § 679.20(a)(7)(iii)(A)(3). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(1), NMFS apportions 400 mt of Pacific cod from the B season jig gear apportionment to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) are revised as follows: 296 mt to the B season apportionment for vessels using jig gear and 2,936 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 14, 2006.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 2006.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–4083 Filed 4–26–06; 3:44 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 83
Monday, May 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24585; Directorate Identifier 2004–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and –15F Airplanes; Model DC–9–21 Airplanes; Model DC–9–30 Series Airplanes; Model DC–9–41 Airplanes; and Model DC–9–51 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. The existing AD currently requires a one-time inspection at a certain disconnect panel in the left forward cargo compartment to find contamination of electrical connectors and to determine if a dripshield is installed over the disconnect panel, and corrective actions if necessary. This proposed AD would revise the applicability of the existing AD to remove certain airplanes and add others. This proposed AD results from a report of electrical arcing that resulted in a fire. We are proposing this AD to prevent contamination of certain electrical connectors, which could cause electrical arcing and consequent fire on the airplane.

DATES: We must receive comments on this proposed AD by June 15, 2006.

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

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–24585; Directorate Identifier 2004–NM–275–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of 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 may can 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.

Discussion

On January 22, 2003, we issued AD 2003–03–08, amendment 39–13032 (68 FR 4900, January 31, 2003), for certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. That AD requires a one-time inspection at a certain disconnect panel in the left forward cargo compartment to find contamination of electrical connectors and to determine if a dripshield is installed over the disconnect panel, and corrective actions if necessary. That AD resulted from a report of electrical arcing that resulted in a fire. We issued that AD to prevent contamination of certain electrical connectors, which could cause electrical arcing that could result in a fire on the airplane.

Actions Since Existing AD Was Issued

Since we issued AD, we have reviewed Revision 2 of Boeing Alert Service Bulletin DC9–24A190, dated October 12, 2004 (Revision 1 of the service bulletin was referred to in AD 2003–03–08 as the appropriate source of service information for the required actions). The one-time general visual inspection and corrective actions specified in Revision 2 are identical to those in Revision 1. The effectivity of Revision 2 has been changed to include 369 additional airplanes (254 U.S.-registered airplanes) that were inadvertently omitted from Revision 1 and to remove 25 airplanes (19 U.S.-registered airplanes) that have been removed from service due to an accident, dismantling, or scrapping. Accomplishing the actions specified in the service information is intended to

adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2003–03–08 and would retain the requirements of the existing AD. This proposed AD would also revise the applicability of the existing AD to remove certain airplanes and add others. For the added airplanes, this proposed AD would require accomplishing the actions specified in Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004, described previously.

Differences Between the Proposed AD and Service Bulletin

McDonnell Douglas Model DC–9–15F airplanes are not specifically identified by model name in paragraph 1.A., ''Effectivity,'' of Boeing Alert Service Bulletin DC9–24A190, Revision 2. However, those airplanes are identified by manufacturer's fuselage numbers in the effectivity listing. Therefore, we have listed those airplanes in the applicability of this proposed AD.

In addition, paragraph 1.A., ''Effectivity,'' of Boeing Alert Service Bulletin DC9–24A190, Revision 2, specifies Model ''DC–9–33'' airplanes. There is no such model on the FAA Type Certificate Data Sheet No. A6WE, dated November 1, 2001. Therefore, the applicability of this proposed AD does not refer to that model designation.

We have coordinated the differences above with the airplane manufacturer.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2003–03–08. Since AD 2003–03–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2003–03–08	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).

After AD 2003–03–08 was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. Also, the number of affected U.S.-registered airplanes that need to comply with the inspection required by AD 2003–03–08 was increased from 51 airplanes to 170 airplanes. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

There are about 649 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2003–03–08)	1	$80	$80	170	$13,600
Inspection (new proposed action)	1	80	80	254	20,320

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. 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 proposed 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13032 (68 FR 4900, January 31, 2003) and adding

the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2006–24585; Directorate Identifier 2004–NM–275–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 15, 2006.

Affected ADs

(b) This AD supersedes AD 2003–03–08.

Applicability

(c) This AD applies to the McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category, as identified in Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004.

TABLE 1.—AFFECTED AIRPLANES

Model
(1) DC–9–14, DC–9–15, and –15F airplanes.
(2) DC–9–21 airplanes.
(3) DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, and DC–9–34F airplanes.
(4) DC–9–41 airplanes.
(5) DC–9–51 airplanes.

Unsafe Condition

(d) This AD results from a report of electrical arcing that resulted in a fire. We are issuing this AD to prevent contamination of certain electrical connectors, which could cause electrical arcing and consequent fire on 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.

Requirements of AD 2003–03–08

One-Time Inspection and Corrective Actions

(f) For airplanes equipped with forward lavatories, as listed Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001: Within 18 months after March 7, 2003 (the effective date AD 2003–03–08), perform a one-time general visual inspection of the disconnect panel at station Y=237.000 in the left forward cargo compartment to find evidence of contamination (*e.g.*, staining or corrosion) of electrical connectors by blue water, and to determine if a dripshield is installed over the disconnect panel. Do this inspection according to the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A190, Revision 01, excluding Evaluation Form, dated November 21, 2001.

(1) If no evidence of contamination of electrical connectors is found, and a dripshield is installed, no further action is required by this AD.

(2) If any evidence of contamination of any electrical connector is found: Before further flight, remove each affected connector, and install a new or serviceable connector according to the service bulletin.

(3) If no dripshield is installed over the disconnect panel: Before further flight, install a dripshield according to the service bulletin.

Previously Accomplished Inspections and Corrective Actions

(g) Inspections and corrective actions accomplished before March 7, 2003, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A190, dated July 31, 2001, are considered acceptable for compliance with the corresponding action specified in paragraph (f) of this AD.

New Requirements of this AD

One-Time Inspection and Corrective Actions

(h) For airplanes other than those identified in paragraph (f) of this AD: Within 18 months after the effective date of this AD, do the one-time general visual inspection and applicable corrective actions specified in paragraph (f) of this AD, in accordance with Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004. The applicable corrective actions must be done before further flight.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office, 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.

Issued in Renton, Washington, on April 20, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–6497 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–0098

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') is issuing a Notice of Proposed Rulemaking (''NPRM'') to amend the Telemarketing Sales Rule (''TSR'') to revise the fees charged to entities accessing the National Do Not Call Registry, and invites written comments on the issues raised by the proposed changes.

DATES: Written comments must be received on or before June 1, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''TSR Fee Rule, Project No. P034305,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Moreover, because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1]

Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftc-dncfees2006* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-dncfees2006* weblink. If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/opa/2006/04/dncfees2006.htm* to read the Notice of Proposed Rulemaking and the news release describing this proposed Rule.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.htm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: John A. Krebs, (202) 326–3747, Division of Planning & Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On December 18, 2002, the Commission issued final amendments to the Telemarketing Sales Rule, which, *inter alia,* established the National Do Not Call Registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls (''Amended TSR'').[2] Under the Amended TSR, most telemarketers are required to refrain from calling consumers who have placed their numbers on the registry.[3] Telemarketers must periodically access the registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.[4]

Shortly after issuance of the Amended TSR, Congress passed The Do-Not-Call Implementation Act (''the Implementation Act'').[5] The Implementation Act gave the Commission the specific authority to ''promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the [TSR] * * * No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available * * * to offset the costs of activities and services related to the implementation and enforcement of the [TSR], and other activities resulting from such implementation and enforcement.''[6]

On July 29, 2003, pursuant to the Implementation Act and the Consolidated Appropriations Resolution, 2003,[7] the Commission issued a Final Rule further amending the TSR to impose fees on entities accessing the National Do Not Call Registry (''the Original Fee Rule'').[8] Those fees were based on the FTC's best estimate of the number of entities that would be required to pay for access to the National Registry, and the need to raise $18.1 million in Fiscal Year 2003 to cover the costs associated with the implementation and enforcement of the ''do-not-call'' provisions of the Amended TSR. The Commission determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The Original Fee Rule established an annual fee of $25 for each area code of data requested from the National Registry, with the first five area codes of data provided at no cost.[9] The maximum annual fee was capped at $7,375 for entities accessing 300 area codes of data or more.[10] On July 30, 2004, pursuant to the Implementation Act and the Consolidated Appropriations Act, 2004,[11] the Commission issued a revised Final Rule further amending the TSR and increasing fees on entities accessing the National Do Not Call Registry (''the 2004 Fee Rule'').[12] Those fees were based on the FTC's experience through June 1, 2004, its best estimate of the number of entities that would be required to pay for access to the National Registry, and the need to raise $18 million in Fiscal Year 2004 to cover the costs associated with the implementation and enforcement of the ''do-not-call'' provisions of the Amended TSR. The Commission determined that the fee structure would continue to be based on the number of different area codes of data that an entity wished to access annually. The 2004 Fee Rule established an annual fee of $40 for each area code of data requested from the National Registry, with the first five area codes of data provided at no cost.[13] The maximum annual fee was capped at $11,000 for entities accessing 280 area codes of data or more.[14]

On July 27, 2005, pursuant to the Implementation Act and the Consolidated Appropriations Act, 2005,[15] the Commission issued a revised Final Rule further amending the TSR and increasing fees on entities accessing the National Do Not Call Registry (''the 2005 Fee Rule'').[16] These fees were based on the FTC's experience through June 1, 2005, its best estimate of the number of entities that would be required to pay for access to the National Registry, and the need to raise $21.9 million in Fiscal Year 2005 to cover the costs associated with the implementation and enforcement of the ''do-not-call'' provisions of the Amended TSR. The Commission again determined that the fee structure would be based on the number of different area codes of data that an entity wished to access annually. The 2005 Fee Rule established an annual fee of $56 for each area code of data requested from the National Registry, with the first five area codes of data provided at no cost.[17] The maximum annual fee was capped at $15,400 for entities accessing 280 area codes of data or more.[18]

In the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (''the 2006 Appropriations Act''),[19] Congress directed the FTC to collect offsetting fees in the amount of $23 million in Fiscal Year 2006 to implement and enforce the TSR.[20] Pursuant to the 2006 Appropriations Act and the Implementation Act, as well as the Telemarketing Fraud and Abuse Prevention Act (''the Telemarketing Act''),[21] the FTC is issuing this NPRM to amend the fees charged to entities

[2] 68 FR 4580 (Jan. 29, 2003).

[3] 16 CFR 310.4(b)(1)(iii)(B).

[4] 16 CFR 310.4(b)(3)(iv). The Commission recently amended the TSR to requires telemarketers to access the National Registry at least once every 31 days, effective January 1, 2005. See 69 FR 16368 (Mar. 29, 2004).

[5] Pub. L. 108–10, 117 Stat. 557 (2003).

[6] Id.

[7] Pub. L. 108–7, 117 Stat. 11 (2003).

[8] 68 FR 45134 (July 31, 2003).

[9] Once an entity requested access to area codes of data in the National Registry, it could access those area codes as often as it deemed appropriate for one year (defined as its ''annual period''). If, during the course of its annual period, an entity needed to access data from more area codes than those initially selected, it would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period was divided into two semi-annual periods of six-months each. Obtaining additional data from the registry during the first semi-annual, six month period required a payment of $25 for each new area code. During the second semi-annual, six-month period, the charge for obtaining data from each new area code requested during that six-month period was $15. These payments would provide the entity access to those additional area codes of data for the remainder of its annual period.

[10] 68 FR at 45141.

[11] Pub. L. 108–199, 118 Stat. 3 (2004).

[12] 69 FR 45580 (July 30, 2004).

[13] Id. at 45584. The 2004 Fee Rule had the same fee structure as the Original Fee Rule. However, fees were increased from $25 to $40 per area code for the annual period and from $15 to $20 per area code for the second six-month period.

[14] Id.

[15] Pub. L. 108–447, 118 Stat. 2809 (2004).

[16] 70 FR 43273 (July 27, 2005).

[17] Id. at 43275. The 2005 Fee Rule had the same fee structure as the 2004 Fee Rule, except that the fees were increased from $40 to $56 per area code for the annual period and from $20 to $28 per area code for the second six-month period.

[18] Id.

[19] Pub. L. 109–108, 119 Stat. 2290 (2005).

[20] *Id.* at 2330.

[21] 15 U.S.C. 6101–08.

accessing the National Do Not Call Registry.

II. Calculation of Proposed Revised Fees

In the Original Fee Rule, the Commission estimated that 10,000 entities would be required to pay for access to the National Do Not Call Registry. The Commission based its estimate on the ''best information available to the agency'' at that time.[22] It noted that this estimate was based on ''a number of significant assumptions,'' about which the Commission had sought additional information during the comment period. The Commission noted, however, that it received virtually no comments providing information supporting or challenging these assumptions.[23] As a result, the Commission anticipated ''that these fees may need to be reexamined periodically and adjusted, in future rulemaking proceedings, to reflect actual experience with operating the registry.'' [24]

In the 2004 Fee Rule, the Commission reported that ''[a]s of June 1, 2004, more than 65,000 entities had accessed the national registry. More than 57,000 of those entities had accessed five or fewer area codes of data at no charge, and 1,100 'exempt' entities also accessed the registry at no charge. Thus, more than 7,100 entities have paid for access to the registry, with over 1,200 entities paying for access to the entire registry.'' [25] The Commission based its calculation of revised fees on this experience, with the expectation that the number of entities accessing the registry in Fiscal Year 2004 would be substantially the same as in Fiscal Year 2003. As in the Original Fee Rule, the Commission based its estimate on the best information available at the time, with the continuing intent to periodically reexamine and adjust the fees to reflect actual experience with operating the registry.

In the 2005 Fee Rule, the Commission reported that from March 1, 2004 through February 28, 2005,[26] ''more than 60,800 entities have accessed all or part of the information in the registry. Approximately 1,300 of these entities are 'exempt' and therefore have accessed the registry at no charge. An additional 52,700 entities have accessed five or fewer area codes of data, also at no charge. As a result, approximately 6,700 entities have paid for access to the registry, with slightly less than 1,100 entities paying for access to the entire registry.'' [27]

From March 1, 2005 to February 28, 2006, slightly less than 66,200 entities have accessed all or part of the information in the registry. Approximately 1,300 of these entities are ''exempt'' and therefore have accessed the registry at no charge.[28] An additional 58,300 entities have accessed five or fewer area codes of data, also at no charge. As a result, approximately 6,500 entities have paid for access to the registry, with slightly less than 1,000 entities paying for access to the entire registry.

As previously stated, the 2006 Appropriations Act directs the Commission to collect offsetting fees in Fiscal Year 2006 to implement and enforce the Amended TSR.[29] The Commission is proposing a revised Fee Rule to raise $23 million of fees to offset costs it expects to incur in this Fiscal Year for the following purposes related to implementing and enforcing the Amended TSR. First, funds are required to operate the National Registry. This includes items such as handling consumer registration and complaints, telemarketer access to the registry, state access to the registry, and the management and operation of law enforcement access to appropriate information.[30] Second, funds are required for law enforcement efforts, including identifying targets, coordinating domestic and international initiatives, challenging alleged violators, and consumer and business education efforts, which are critical to securing compliance with the Amended TSR. These law enforcement efforts are a significant component of the total costs, given the large number of ongoing investigations currently being conducted by the agency, and the substantial effort necessary to complete such investigations. Third, funds are required to cover ongoing agency infrastructure and administration costs associated with the operation and enforcement of the registry, including information technology structural supports and distributed mission overhead support costs for staff and non-personnel expenses such as office space, utilities, and supplies.

The Commission proposes to revise the fees charged for access to the National Registry based on the assumption that approximately the same number of entities will access similar amounts of data from the National Registry during their next annual period.[31] Based on that assumption, and the continued allowance for free access to ''exempt'' organizations and for the first five area codes of data, the proposed revised fee would be $62 per area code. The maximum amount that would be charged to any single entity would be $17,050, which would be charged to any entity accessing 280 area codes of data or more. The fee charged to entities requesting access to additional area codes of data during the second six months of their annual period would be $31.

The Commission proposes to continue allowing all entities accessing the National Registry to obtain the first five area codes of data for free.[32] The

[22] 68 FR at 45140.

[23] *Id.*

[24] *Id.* at 45142.

[25] 69 FR at 45584.

[26] The Commission noted that ''[a]s of June 1, 2005, there [had] been no significant or material changes in the number of entities that have accessed the registry since the Commission issued 2005 Fee Rule NPR.'' 70 FR at 43279.

[27] 79 FR at 43279 n. 81.

[28] The 2005 Fee Rule, the 2004 Fee Rule, and the Original Fee Rule stated that ''there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required to under this Rule, 47 CFR 64.1200, or any other federal law.'' 16 CFR 310.8(c). Such ''exempt'' organizations include entities that engage in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys. They also include entities engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, pursuant to 16 CFR 310.4(b)(1)(iii)(B)*(i)* or *(ii)*, and who do not access the National Registry for any other purpose. *See* 70 FR at 43275; 69 FR at 45585–6; and 68 FR at 45144.

[29] 2004 $23.1 *See* 119 Stat. at 2330. This $23.1 million includes collections of $5.1 million from the Fiscal Year 2003 Original Fee Rule that were actually collected in Fiscal Year 2004 and $18 million to be raised from this year's Amended Fee Rule.

[30] From March 2005 to February 2006, approximately 51 million phone numbers were added to the National Registry, with a total since inception of approximately 121 million registrations. Since inception, the registry has also handled many requests from organizations wishing to access the registry (e.g. telemarketers, states, and law enforcers), including hundreds of thousands of subscription requests, and millions of area code access requests (including downloads and interactive search requests).

[31] Telemarketers were first able to access the National Registry on September 2, 2003. As a result, the first year of operation did will not conclude until August 31, 2004 and the second year of operation did not end until August 31, 2005. Similarly, the third year of operation will not end until August 31, 2006. The Commission realizes that a small number of additional entities may access the National Registry for the first time prior to September 1, 20062004, and should be considered in calculating the revised fees. In this regard, the Commission will adjust the assumptions to reflect the actual number of entities that have accessed the registry, and make the appropriate changes to the fees, at the time of issuance of the Final Rule.

[32] If all entities accessing the National Registry were charged for the first five area codes of data, the cost per area code would be reduced to $38$32, while the maximum amount charged to access the entire National Registry would be $10,640$8960. These hypothetical fee rates are based on the assumption that the same number of entities would pay to access the same number of area codes they currently access for free.

Commission allowed such free access in the Original Fee Rule, the 2004 Fee Rule, and the 2005 Fee Rule, ''to limit the burden placed on small businesses that only require access to a small portion of the national registry.'' [33] The Commission noted that such a fee structure was consistent with the mandate of the Regulatory Flexibility Act,[34] which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact. As stated in the prior fee rules, ''the Commission continues to believe that providing access to five area codes of data for free is an appropriate compromise between the goals of equitably and adequately funding the national registry, on one hand, and providing appropriate relief for small businesses, on the other.'' [35] In addition, requiring over 58,000 entities to pay a small fee for access to five or fewer area codes from the National Registry would place a significant burden on the registry, requiring the expenditure of even more resources to handle properly that additional traffic. Nonetheless, the Commission continues to seek comment on this issue.

The Commission also proposes to continue allowing ''exempt'' organizations, as discussed in footnote 28, above, to obtain free access to the National Registry. The Commission believes that any exempt entity, voluntarily accessing the National Registry to avoid calling consumers who do not wish to receive telemarketing calls, should not be charged for such access. Charging such entities access fees, when they are under no legal obligation to comply with the ''do-not-call'' requirements of the TSR, may make them less likely to obtain access to the National Registry in the future, resulting in an increase in unwanted calls to consumers. As with free access to five or fewer area codes, the Commission seeks comment on this issue as well.

III. Invitation to Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this NPRM. Written comments must be received on or before June 1, 2006. All comments should be filed as prescribed in the **ADDRESSES** section above.

IV. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

V. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act,[36] the Office of Management and Budget (''OMB'') approved the information collection requirements in the TSR and assigned OMB Control Number 3084–0097.[37] The proposed rule amendment, as discussed above, provides for an increase in the fees that are charged for accessing the National Do Not Call Registry. Therefore, the proposed rule amendment does not create any new recordkeeping, reporting, or third-party disclosure requirements that would be subject to review and approval by OMB pursuant to the Paperwork Reduction Act.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act [38] requires an agency either to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that the rule concerning revised fees will have the threshold impact on small entities. As discussed in Section II, above, this NPRM specifically proposes charging no fee for access to one to five area codes of data included in the registry. As a result, the Commission anticipates that many small businesses will be able to access the National Registry without having to pay any annual fee. Thus, it is unlikely that there will be a significant burden on small businesses resulting from the adoption of the proposed revised fees. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of this proposed rule on small entities. Therefore, the Commission has prepared the following analysis.

A. Reasons for the Proposed Rule

As outlined in Section II, above, the Commission is proposing to amend the fees charged to entities accessing the National Registry in order to raise sufficient amounts to offset the current year costs to implement and enforce the Amended TSR.

B. Statement of Objectives and Legal Basis

The objective of the current proposed rule is to collect sufficient fees from entities that must access the National Do Not Call Registry. The legal authority for this NPRM is the 2006 Appropriations Act, the Implementation Act, and the Telemarketing Act.

C. Description of Small Entities to Which the Rule Will Apply

The Small Business Administration has determined that ''telemarketing bureaus'' with $6.5 million or less in annual receipts qualify as small businesses.[39] Similar standards, i.e., $6.5 million or less in annual receipts, apply for many retail businesses which may be ''sellers'' and subject to the proposed revised fee provisions outlined in this NPRM. In addition, there may be other types of businesses, other than retail establishments, that would be ''sellers'' subject to the proposed rule.

As described in Section II, above, over 58,000 entities have accessed five or fewer area codes of data from the National Registry at no charge. While not all of these entities may qualify as small businesses, and some small businesses may be required to purchase access to more than five area codes of data, the Commission believes that this is the best estimate of the number of small entities that would be subject to the proposed revised fee rule. The Commission invites comment on this issue, including information about the number and type of small business entities that may be subject to the revised fees.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The information collection activities at issue in this NPRM consist principally of the requirement that firms, regardless of size, that access the National Registry submit minimal identifying and payment information, which is necessary for the agency to collect the required fees. The cost impact of that requirement and the labor or professional expertise required for compliance with that requirement were discussed in section V of the 2004 Fee

[33] *See* 68 FR at 45140; 69 FR at 45582; and 70 FR at 43275.

[34] 5 U.S.C. 601.

[35] *See* 68 FR at 45141; 69 FR at 45584; and 70 FR at 43275–6.

[36] 44 U.S.C. 3501–3520.

[37] Commission staff is currently seeking an extension of the clearance for the information collection requirements associated with the TSR. See 71 FR 3302 (January 20, 2006).

[38] 5 U.S.C. 604(a).

[39] See 13 CFR 121.201.

Rule Notice of Proposed Rule Making. 69 FR 23701, 23704 (April 30, 2004).

As for compliance requirements, small and large entities subject to the revised fee rule will pay the same rates to obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the National Registry. As noted earlier, however, compliance costs for small entities are not anticipated to have a significant impact on small entities, to the extent the Commission believes that compliance costs for those entities will be largely minimized by their ability to obtain data for up to five area codes at no charge.

E. Duplication With Other Federal Rules

None.

F. Discussion of Significant Alternatives

The Commission recognizes that alternatives to the proposed revised fee are possible. For example, instead of a fee based on the number of area codes that a telemarketer accesses from the National Registry, access could be provided on the basis of a flat fee regardless of the number of area codes accessed. The Commission believes, however, that these alternatives would likely impose greater costs on small businesses, to the extent they are more likely to access fewer area codes than larger entities.

Another alternative the Commission has considered entails providing small businesses with free access to the National Registry.[40] This alternative would require entities seeking an exemption from the fees to submit information regarding their annual revenues, to determine whether they meet the statutory threshold to be classified a small business and exempt from the fees. The Commission continues to believe, however, ''an alternative approach that would provide small business with exemptive relief more directly tied to size status would not balance the private and public interests at stake any more equitably or reasonably than the approach currently proposed by the Commission.''[41] The Commission also continues to believe that ''such a system would present greater administrative, technical, and legal costs and complexities than the Commission's current proposal which does not require any proof or verification of that status.''[42]

Accordingly, the Commission believes its current proposal is likely to be the least burdensome for small businesses, while achieving the goal of covering the necessary costs to implement and enforce the Amended TSR.

Despite these conclusions, the Commission welcomes comment on any significant alternatives that would further minimize the impact on small entities, consistent with the objectives of the Telemarketing Act, the 2006 Appropriations Act, and the Implementation Act.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

VII. Proposed Rule

Accordingly, for the reasons stated in the preamble, the Federal Trade Commission proposes to amend part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

2. Revise § 310.8(c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $62 per area code of data accessed, up to a maximum of $17,050; *provided,* however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay $62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay $31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–6507 Filed 4–28–06; 8:45 am]

BILLING CODE 6750–01–P

[40] See 69 FR at 45583; see also 68 FR 16238, 16243 n.53 (April 3, 2003).

[41] See 68 FR at 16243 n.53.

[42] Id.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

[FHWA Docket No. FHWA–2006–24134]

RIN 2125–AF17

Size and Weight Enforcement and Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This action updates the regulations governing the enforcement of commercial vehicle size and weight to incorporate provisions enacted in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: a Legacy for Users (SAFETEA–LU); the Energy Policy Act of 2005; and, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006. This action would further add various definitions; correct obsolete references, definitions, and footnotes; eliminate redundant provisions; amend numerical route changes to the National Highway designations; and incorporate statutorily mandated weight and length limit provisions.

DATES: Comments must be received on or before June 30, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://*

dmses.dot.gov/submit, or fax comments to (202) 493–2251.

Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comment must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William Mahorney, Office of Freight Management and Operations, (202) 366–6817, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Electronic submission and retrieval help and guidelines are available under the help section of the Web site. Alternatively, internet users may access all comments received by the U.S. DOT Docket Facility by using the universal resource locator (URL) *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 544), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (Pub. L. 109–115, 119 Stat. 2396) amended several areas of the size and weight regulations in the areas of auxiliary power units, custom harvesters, over-the-road buses, and drive-away saddlemount vehicle combinations.

Additionally, the transfer of motor carrier safety functions to the Federal Motor Carrier Safety Administration (FMCSA) established by the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748) affected the internal organizational structure of the FHWA. Although the responsibility for commercial motor vehicle size and weight limitation remained in the FHWA, the references in the regulations to the old FHWA's Office of Motor Carriers (OMC) and its officials are obsolete. This action will update these references to reflect the changes in the agency's organizational structure.

Section-by-Section Discussion of the Proposals

Section 657.1 Purpose

Section 657.1 indicates that the purpose of the regulations is to prescribe requirements for administering a program of vehicle size and weight enforcement on ''Federal-aid (FA) highways.'' This term refers to the Federal-aid primary (FAP), Federal-aid secondary (FAS), and Federal-aid urban (FAU) systems, as indicated in the current definition of ''Enforcing or Enforcement'' in 23 CFR 657.3 and as provided in 23 U.S.C. 141. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914) eliminated these old highway system categories and replaced them with the National Highway System (NHS) as the Federal-aid highway system for the purpose of apportioning Federal highway funds. It left unchanged the requirement in 23 U.S.C. 141 that States enforce their size and weight laws on the FAP, FAS, and FAU. Section 4006(c) of the ISTEA did preserve the Secretary's authority to designate FAP routes as part of the National Network but limited it to FAP routes in existence as of June 1, 1991. The requirements of 23 U.S.C. 141 were reflected in 23 CFR 657.15(c)(1) by requiring States to certify that their size and weight laws are being enforced on those highways which, prior to October 1, 1991, were designated as part of the FAP, FAS, and FAU. This date was selected because it is the start of the States' yearly enforcement period.

Therefore, the FHWA proposes to amend 23 CFR 657.1 to replace the reference to ''Federal-aid (FA) highways'' with ''highways which, prior to October 1, 1991, were designated as part of the Federal-aid Interstate, Federal-aid primary, Federal-aid secondary, or Federal-aid urban systems.'' The October 1, 1991, date is the same as that adopted in connection with the certification in 23 CFR 657.15(c)(1).

Section 657.3 Definitions

The FHWA proposes to amend the definition of ''Enforcing or Enforcement'' to delete the old references to ''Federal-aid (FA) highways'' and to replace this reference with ''highways which, prior to October 1, 1991, were designated as part of the Federal-aid Interstate, Federal-aid primary, Federal-aid secondary, or Federal-aid urban systems'' for the reasons noted above.

Prior to a final rule published June 13, 1994 (59 FR 30392, 30416), section 657.15(b) required States to identify and analyze enforcement efforts in ''urban areas'' not subject to State size and weight enforcement. The FHWA recognized such areas as those with a population of 5,000 or more. Since the intent of section 658.15(b) was to ensure adequate enforcement in larger cities, the 1994 final rule changed the requirement to ''urbanized areas,'' meaning those with a population of 50,000 or more. However, the 1994 rule failed to define ''urbanized areas.'' In order to clarify the intent of the change, this notice proposes to adopt a definition of ''urbanized areas'' in 23 CFR 657.3 as areas with a population of 50,000 or more, as defined in 23 U.S.C. 101.

Section 657.11 Evaluation of Operations

Prior to creation of the FMCSA, the responsibility for the enforcement of vehicle size and weight laws and regulations was a function of the Office of Motor Carriers within the FHWA. Evaluation or operations reports were forwarded through the Regional Director of Motor Carriers. After the creation of the FMCSA, various driver and vehicle safety inspection functions were transferred from the FHWA's Office of Motor Carriers to the FMCSA in a final rule published on October 19, 1999 (64 FR 56270). Not transferred, but remaining within FHWA, was enforcement of commercial motor vehicle size and weight laws and regulations. The FHWA proposes to

remove outdated references to the Office of Motor Carriers and the Regional Director of Motor Carriers in paragraphs (a) and (b). The proposed changes reflect changes to the agency's organizational structure, but do not change the intent or requirements of the section.

Section 657.15 Certification Content

The FHWA proposes to add a period after the citation, ''* * * 49 U.S.C. 31112'' in 23 CFR 657.15(b) so that the word ''Urbanized'' is the start of a new sentence. It also proposes to delete the last sentence in 23 CFR 657.15(e) because it is out of date. The requirement that laws and regulations pertaining to special permits and penalties be specifically identified and analyzed in accordance with section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689) has been eliminated by section 3003 of the Federal Elimination and Sunset Act of 1995 (Pub. L. 104–66, 109 Stat. 1914). Therefore, the FHWA proposes to eliminate the requirement to collect this data, since it not only serves no purpose, but also is duplicative of other requirements for this information. The States would still be required to report on penalties and permits because policies and practices in regard to each would still be included as part of the State enforcement plans required pursuant to 23 CFR 657.9(b)(1)(ii) and (iii).

The FHWA is further proposing to eliminate a burdensome regulatory requirement found in section 657.15(f)(3)(iii) related to the reporting of overwidth movements for divisible loads. The requirement for States to report the number of permits issued for overwidth movement of a divisible load is no longer necessary and therefore the FHWA proposes that it be eliminated. Section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–66, 109 Stat. 707) eliminated this reporting requirement. In addition, the number of divisible overwidth permits issued by States has never been considered in determining whether a State is adequately enforcing its size and weight laws. The States have retained the authority to allow overwidth vehicles on the National Network by requiring a permit, and may issue any number of such permits on any basis that is deemed appropriate. Consequently, eliminating the need to report on the number of divisible overwidth permits issued would relieve States of an unnecessary and burdensome reporting requirement. This requirement would be deleted from section 657.15(f)(3)(iii).

Section 657.17 Certification Submittal

References to the Office of Motor Carriers in 657.17(a) and (b) would be replaced in this proposed rule by references to the FHWA. In addition, the references in 657.17(b) to the ''Office of Motor Carriers'' and ''Associate Administrator for Motor Carriers'' would be eliminated, because those positions no longer exist.

Section 657.19 Effect of Failure To Certify or To Enforce State Laws Adequately

The FHWA proposes to amend this section to replace the outdated reference to ''Federal-aid highways.'' The requirements in this section apply not to current Federal-aid highways (which comprise the National Highway System (NHS)), but to highways which, prior to October 1, 1991, were designated as part of the Federal-aid primary (FAP), Federal-aid secondary, (FAS) and Federal-aid urban (FAU) systems.

The second Federal-aid reference is correct because it refers to Federal-aid funds for the NHS that would be withheld if a State failed to adequately enforce its size and weight limits on highways that, prior to October 1, 1991, were designated as the FAP, FAS, and FAU systems.

Part 658

Section 658.5 Definitions

The current definition for ''Commercial motor vehicle'' was issued in a final rule published March 12, 2004 (69 FR 11994) and excluded RVs during the relatively small amounts of time when they are operated for a commercial purpose, such as being driven from a manufacturer to a dealer. However, the definition as currently written is flawed because it would exclude them only when ''operated'' as RVs, i.e., when used for a private recreational purpose. As a result, RVs operated for a commercial purpose remained CMVs subject to Federal width limits. The FHWA is proposing to amend the definition to clarify those movements that include transportation to/from the manufacturer for customer delivery, sale, or display purposes are not subject to the provisions of this part. The FHWA believes that the rare occasions and limited periods of time in which a recreational vehicle is operated to/from the manufacturer does not change the characteristic of a vehicle enough to merit inclusion in the regulation. The FHWA invites comments on the possible safety effects of this proposed change.

The definition of ''nondivisible'' load or vehicle'' provides criteria to determine whether or not a load is nondivisible. This definition is important, because with few exceptions, a State may not issue an overweight permit for a divisible load. This notice proposes to expand these criteria to include vehicles loaded with salt, sand, chemicals or a combination of these materials, to be used in spreading the materials on any winter roads, and when operating as emergency response vehicles. These vehicles may be equipped with, or without, a plow or blade in front. These vehicles would necessarily use the Interstate System while performing its duties in order to access other roads. Although these vehicles transport divisible loads and could be loaded to less than capacity in order to comply with Federal Interstate weight limits, it would be counterproductive to their mission to require them to return to their depots for reloading more often. This would render them less effective in responding to emergency road conditions. In addition, the vehicles would be overweight for only a portion of their movement, since the load would be reduced as the material was deployed.

The FHWA has recognized the importance of treating snow or ice-covered highways quickly and efficiently. The proposed revision to the definition of ''non-divisible load or vehicle'' will facilitate the ability of States to meet emergency snow and ice conditions through the issuance of special overweight permits for emergency response vehicles. This proposed change would not extend to vehicles transporting sand, salt, and/or chemicals for other purposes than those specified above. The FHWA believes that this proposed change would be a reasonable action, balancing the safety of the motoring public during harsh winter weather against the effects of a temporarily overweight snow and ice removal vehicle. FHWA invites public comment on this proposed change to the regulations.

Section 4141 of SAFETEA–LU amended section 31111(a) of title 49, United States Code, to include a definition of ''Drive-away Saddlemount with Fullmount Vehicle Transporter Combination'' and to impose a vehicle length limitation of not less than or more than 97 feet on a drive-away saddlemount with fullmount vehicle transporter combinations. The SAFETEA–LU section 4141 defines the term ''Drive-away Saddlemount with Fullmount Vehicle Transporter Combination'' to mean ''a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to

the frame or fifth-wheel of the forward vehicle of the truck or truck tractor in front of it.'' House committee staff that drafted the amendment alerted the FHWA that the lack of reference in the definition to the fullmount vehicle was intended to expand the term to include saddlemount combinations with or without fullmount. The FHWA believes that this is a reasonable interpretation of the SAFETEA–LU provision. As a result, the FHWA proposes to add the definition of ''Drive-away Saddlemount Vehicle Transporter Combination'' to its regulations, omitting the term fullmount, and amend its regulations at 23 CFR part 658 to extend the 97 foot length limitation to all drive-away saddlemount vehicle combinations that are specifically designed to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck or truck tractor in front of it.

Section 347 of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, 117 Stat. 419) included ''over-the-road bus(es)'' in the temporary exemption already provided for transit vehicles that allows them to exceed established Federal Interstate axle weights during Interstate operations. Section 658.5, however, does not contain a definition of ''over-the-road bus.'' The FHWA therefore proposes incorporating the previously established definition of ''over-the-road bus'' found in section 12181(5) of title 42, United States Code into § 658.5.

Section 658.13 Length

Section 4112 of SAFETEA–LU explicitly adds special rules for certain property-carrying units operating in Nebraska. Specifically, truck-tractors pulling trailers or semitrailers, used to transport custom harvester equipment during harvest months, may be allowed to operate on Nebraska highways at a length of up to 81 feet, 6 inches. The FHWA therefore proposes to amend § 658.13 to reflect this statutory change.

Section 4141 of SAFETEA–LU amended 49 U.S.C. 31111(a) and (b) by inserting a definition of ''Drive-away Saddlemount with Fullmount Vehicle Transporter Combination'' and preempted the States from prescribing or enforcing a regulation that ''imposes a vehicle length limitation of not less than or more than 97 feet'' on these vehicle combinations. As discussed above, the FHWA is proposing to amend the specialized equipment provision § 658.13(e)(1)(iii) to incorporate this statutory length limit that is now applicable to drive-away saddlemount vehicle transporter combinations.

Section 658.15 Width

Section 658.15(c)(2) currently exempts recreational vehicles from width limitations. Because, as discussed above, the FHWA is proposing to amend 23 CFR 658.5 to eliminate any Federal role in regulating the width of RVs as commercial motor vehicles, the agency is also proposing to eliminate this paragraph.

Section 658.17 Weight

Section 347 of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, 117 Stat. 419) included over-the-road buses in the temporary exemption for transit vehicles. The definition of over-the-road bus used is that found in section 12181(5) of title 42, United States Code. Section 1309 of SAFETEA–LU extended the temporary exemption until October 1, 2009. Subsequently, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act of 2006 (Pub. L. 109–115, 199 Stat. 2396) provided that a covered State, or any political subdivision in such State, may not enforce a single axle weight limitation of less than 24,000 pounds, including enforcement tolerances, on any transit or over-the-road bus. A ''covered state'' means a State that has enforced, in the period beginning October 6, 1992, and ending on November 30, 2005, a single axle weight limitation of 20,000 pounds or greater but less than 24,000 pounds. As a result, the FHWA proposes to amend the regulations in order to reflect the new, 24,000-pound axle weight provision mandated by Congress.

The Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 594) amended 23 U.S.C. 127(a) to allow an increase in the Federal weight limits by up to 400 pounds to account for idle reduction systems or auxiliary power units installed in any heavy-duty vehicle. The intent of this provision is to promote the use of technologies that reduce fuel consumption and emissions that result from engine idling. To qualify for this exception, drivers must present proof by demonstration and/or certification from the manufacturer, that the idle reduction technology is functional at all times, does not exceed 400 pounds gross weight (including fuel), and that the unit cannot be used for any other purpose. The FHWA is therefore proposing regulations to implement the standards for certification and weight tolerances of this new statutory provision. The FHWA encourages public comment on how the certification and demonstration required by this provision might best be carried out by State enforcement authorities or other sources.

Section 658.23 LCV Freeze; Cargo-Carrying Unit Freeze

As previously noted, prior to creation of the FMCSA, the responsibility for the enforcement of vehicle size and weight laws and regulations was a function delegated to the Office of Motor Carriers within the FHWA. After the creation of the FMCSA, various driver and vehicle safety inspection functions were transferred from the FHWA and the Office of Motor Carriers was eliminated. Consequently, the FHWA proposes to replace obsolete references to the Office of Motor Carriers with references to the FHWA.

Appendix A to 23 CFR 658—National Network—Federally-Designated Routes

Section 411(e)(1) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2100) authorized the Secretary to designate Federal-Aid Primary (FAP) routes (including the Interstate System) where States must allow vehicles subject to Federal length and width requirements to operate. The resulting ''National Network'' is shown in appendix A to 23 CFR part 658. However, the explanatory column headings in appendix A currently contain an improper reference to the Federal-aid Primary highways.

This heading is not only incorrect but also unnecessary. It is incorrect because the final rule implementing the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914) published June 13, 1991 (59 FR 30392) noted that, ''The ISTEA [in section 4006(c)] effectively replaced what had been known as the FAP system with the NHS (National Highway System).'' Thus, it is inappropriate to refer to the Federal-aid Primary Highway as it no longer exists. Further, the explanation is unnecessary because there is no need to indicate how the routes were derived since they are specifically listed. Therefore, the FHWA proposes to revise the explanatory heading of the columns in appendix A to read as follows:

[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional highways.]

Similarly, the listing for 16 States (AR, CO, IN, KS, LA, MS, MT, NE, NV, OH, OK, SD, TX, UT, WA, and WY) in appendix A are followed by an explanatory statement that reads as follows:

No additional routes have been federally designated; STAA dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law.

This statement is incorrect because there are no longer any highways designated as FAP, however highways on the National Network have not been specifically listed for these States so a general description is necessary. As noted earlier, the ISTEA preserved the Secretary's authority to designate National Network routes from FAP routes in existence as of June 1, 1991. Therefore, the FHWA proposes to revise the explanatory statement to read as follows:

No additional routes have been federally designated; STAA dimensioned commercial vehicles may legally operate on all highways which, prior to June 1, 1991, were designated as Federal-aid Primary highways.

The State of New Mexico has notified the FHWA of route number changes for routes on its portion of the National Network. These changes are numerical only and will not change the original network. The FHWA is therefore proposing to amend appendix A to reflect these route number changes. A portion of NM 550 has been re-designated NM 516, U.S. 80 has been re-designated NM 80, U.S. 64 now terminates at NM 516 Farmington, and U.S. 666 has been re-designated as NM 491.

Appendix B to Part 658—Grandfathered Semitrailer Lengths

Footnotes 1, 2, and 3 in appendix B to 23 CFR 658 refer to 23 CFR 658.13(h). However, section 658.13 was reorganized in a previous rulemaking action, at 67 FR 15110, March 29, 2002, and the provisions that formerly appeared in paragraph (h) are now found in paragraph (g). The footnotes will be corrected accordingly.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action is not a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This proposed rule will not adversely affect, in a material way, any sector of the economy. This proposed action changes out-dated references to offices within the FHWA and updates the current regulations to reflect changes made by the Congress in SAFETEA–LU and other recent legislation. Additionally, this proposed action would add various definitions; correct obsolete references, definitions, and footnotes; eliminate redundant provisions; amend numerical route changes to the National Highway designations; and incorporate a statutorily mandated weight limit provision. There will not be any additional costs incurred by any affected group as a result of this rule. In addition, these proposed changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs. Consequently, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), we have evaluated the effects of this proposed action on small entities and have determined that the proposed action would not have a significant economic impact on a substantial number of small entities. The FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has preliminarily determined that this proposed action would not warrant the preparation of a Federalism assessment. Any federalism implications arising from this proposed rule are attributable to SAFETEA–LU sections 4112 and 4141. The FHWA has determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

Executive Order 12372 (Intergovernmental Review)

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. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year. (2 U.S.C. 1532) Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause any environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) and has determined that this proposed action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed 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. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Parts 657 and 658

Grants Program—transportation, Highways and roads, Motor carriers.

Issued on: April 21, 2006.

Frederick G. Wright,

Federal Highway Administration Executive Director.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, by revising Parts 657 and 658, respectively, as set forth below.

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

1. Revise the authority citation for part 657 to read as follows:

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689, 23 U.S.C. 127, 141 and 315; 49 U.S.C. 31111, 31113 and 31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1) and (c)(19).

2. Revise § 657.1 to read as follows:

§ 657.1 Purpose.

To prescribe requirements for administering a program of vehicle size and weight enforcement on highways which, prior to October 1, 1991, were designated as part of the Federal-aid Interstate, Federal-aid Primary, Federal-aid Secondary, or Federal-aid Urban Systems, including the required annual certification by the State.

3. Revise § 657.3 to read as follows:

§ 657.3 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Enforcing or *Enforcement* means all actions by the State to obtain compliance with size and weight requirements by all vehicles operating on highways which, prior to October 1, 1991, were designated as part of the Federal-aid Interstate, Federal-aid Primary, Federal-aid Secondary, or Federal-aid Urban Systems.

Urbanized area means an area with a population of 50,000 or more.

4. Revise the first sentence of paragraph (a) and revise paragraph (b) of § 657.11 to read as follows:

§ 657.11 Evaluation of operations.

(a) The State shall submit its enforcement plan or annual update to the FHWA Division Office by July 1 of each year. * * *

(b) The FHWA shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation and of any needed changes in the plan itself or in its implementation. Copies of the evaluation reports and subsequent modifications resulting from the evaluation shall be forwarded to the FHWA's Office of Operations.

5. Revise paragraphs (b), (e), and (f)(3)(iii) of § 657.15 to read as follows:

§ 657.15 Certification content.

* * * * *

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the Interstate System and those routes which, prior to October 1, 1991, were designated as part of the Federal-aid Interstate, Federal-aid Primary, Urban, and Secondary Systems, and that the State is enforcing and complying with the provisions of 23 U.S.C. 127(d) and 49 U.S.C. 31112. Urbanized areas not subject to State jurisdiction shall be identified. The statement shall include an analysis of enforcement efforts in such areas.

* * * * *

(e) A copy of any State law or regulation pertaining to vehicle size and weights adopted since the State's last certification and an analysis of the changes made.

(f) * * *

(3) * * *

(iii) *Permits.* The number of permits issued for overweight loads shall be reported. The reported numbers shall specify permits for divisible and nondivisible loads and whether issued on a trip or annual basis.

6. Revise § 657.17 to read as follows:

§ 657.17 Certification submittal.

(a) The Governor, or an official designated by the Governor, shall submit the certification to the FHWA division office prior to January 1 of each year.

(b) The FHWA division office shall forward the original certification to the FHWA's Office of Operations and one copy to the Office of Chief Counsel. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

7. Revise § 657.19 to read as follows:

§ 657.19 Effect of failure to certify or to enforce State laws adequately.

If a State fails to certify as required by this regulation or if the Secretary determines that a State is not adequately enforcing all State laws respecting maximum vehicle sizes and weights on highways which, prior to October 1, 1991, were designated as part of the Federal-aid Interstate, Federal-aid primary, Federal-aid secondary or Federal-aid urban systems, notwithstanding the State's certification, the Federal-aid funds for the National Highway System apportioned to the

State for the next fiscal year shall be reduced by an amount equal to 10 percent of the amount which would otherwise be apportioned to the State under 23 U.S.C. 104, and/or by the amount required pursuant to 23 U.S.C. 127.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

8. The authority citation for part 658 continues to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111, 31112, and 31114; 49 CFR 1.48(b)(19) and (c)(19).

9. Amend § 658.5 by revising the definition of ''commercial motor vehicle'' and paragraph (2) of the definition of ''nondivisible load or vehicle''; and adding definitions of ''drive-away saddlemount vehicle transporter combinations'' and ''over-the-road bus'' to read as follows:

§ 658.5 Definitions.

* * * * *

Commercial motor vehicle. For purposes of this regulation, a motor vehicle designed or regularly used to carry freight, merchandise, or more than ten passengers, whether loaded or empty, including buses, but not including vehicles used for vanpools, or recreational vehicles.

Drive-away saddlemount vehicle transporter combination. The term drive-away saddlemount vehicle transporter combination means a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the forward vehicle of the truck tractor in front of it. Such combinations may include up to one fullmount.

* * * * *

Nondivisible load or vehicle.

(1) * * *

(2) A State may treat as nondivisible loads or vehicles: Emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy; casks designed for the transport of spent nuclear materials; and military vehicles transporting marked military equipment or materiel.

Over-the-road bus. The term over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment, and typically operating on the Interstate System or roads previously designated as making up the Federal-aid Primary System.

* * * * *

10. Amend § 658.13 by revising paragraph (e)(1)(iii) and by adding paragraph (h) to read as follows:

§ 658.13 Length.

* * * * *

(e) * * *

(1) * * *

(iii) Drive-away Saddlemount vehicle transporter combinations are considered to be specialized equipment. No State shall impose an overall length limit of less or more than 97 feet on such combinations. This provision applies to drive-away saddlemount combinations with up to three saddlemounted vehicles. Such combinations may include one fullmount. Saddlemount combinations must also comply with the applicable motor carrier safety regulations at 49 CFR 393.71.

* * * * *

(h) Truck-tractors, pulling 2 trailers or semitrailers, used to transport custom harvester equipment during harvest months within the State of Nebraska may not exceed 81 feet 6 inches.

11. Revise paragraph (c) of § 658.15 to read as follows:

§ 658.15 Width.

* * * * *

(c) Notwithstanding the provisions of this section or any other provision of law, a State may grant special use permits to motor vehicles, including manufactured housing, that exceed 102 inches in width.

12. In § 658.17, revise paragraph (k) and add paragraph (n) to read as follows:

§ 658.17 Weight.

* * * * *

(k) Any over-the-road bus, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus, is excluded from the axle weight limits in paragraphs (c) through (e) of this section until October 1, 2009. Any State that has enforced, during the period beginning October 6, 1992 and November 30, 2005, a single axle weight limitation of 20,000 pounds or greater but less than 24,000 pounds may not enforce a single axle weight limit on these vehicles of less than 24,000 pounds.

* * * * *

(n) Any vehicle subject to this subpart that utilizes an auxiliary power or idle reduction technology unit in order to promote reduction of fuel use and emissions because of engine idling, may be allowed up to an additional 400 pounds total in gross, axle, and/or tandem axle weights. To be eligible for this exception, the operator of the vehicle must be able to prove, by demonstration and/or certification from the manufacturer, that the idle reduction technology is functional at all times, does not exceed 400 pounds gross weight (including fuel), and that the 400 pound weight increase is not used for any other purpose. Such certification must be available to law enforcement officers at all times.

13. Revise paragraphs (c) and (e) of § 658.23 to read as follows:

§ 658.23 LCV freeze; cargo-carrying unit freeze.

* * * * *

(c) For specific safety purposes and road construction, a State may make minor adjustments of a temporary and emergency nature to route designation and vehicle operating restrictions applicable to combinations subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 and in effect on June 1, 1991 (July 6, 1991, for Alaska). Adjustments which last 30 days or less may be made without notifying the FHWA. Minor adjustments which exceed 30 days require approval of the FHWA. When such adjustments are needed, a State must submit to the FHWA, by the end of the 30th day, a written description of the emergency, the date on which it began, and the date on which it is expected to conclude. If the adjustment involves route designations the State shall describe the new route on which vehicles otherwise subject to the freeze imposed by 23 U.S.C. 127(d) and 49 U.S.C. 31112 are allowed to operate. To the extent possible, the geometric and pavement design characteristics of the alternate route should be equivalent to those of the highway section which is temporarily unavailable. If the adjustment involves vehicle operating restrictions, the State shall list the restrictions that have been removed or modified. If the adjustment is approved, the FHWA will publish the notice of adjustment, with an expiration date, in the **Federal Register**. Requests for extension of time beyond the originally established conclusion date shall be subject to the same approval and publications process as the original request. If upon consultation with the FHWA a decision is reached that minor adjustments made by a State are not legitimately attributable to road or bridge construction or safety, the FHWA will inform the State, and the original conditions of the freeze may be reimposed immediately. Failure to do so may subject the State to a penalty pursuant to 23 U.S.C. 141.

* * * * *

(e) States further restricting or prohibiting the operation of vehicles subject to 23 U.S.C. 127(d) and 49 U.S.C. 31112 after June 1, 1991, shall notify the FHWA within 30 days after the restriction is effective. The FHWA will publish the restriction in the **Federal Register** as an amendment to appendix C to this part. Failure to provide such notification may subject the State to a penalty pursuant to 23 U.S.C. 141.

* * * * *

Appendix A to Section 658—National Network—Federally Designated Routes

14. Amend appendix A to part 658 as follows:

A. By removing the words ''[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional highways.]'' and adding, in their place, the words ''[The federally-designated routes on the National Network consist of the Interstate System, except as noted, and the following additional highways.]'' in each place that they appear;

B. By removing the explanatory phrase ''No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all Federal-aid Primary highways under State law'' for the States of Arkansas, Colorado, Indiana, Kansas, Louisiana, Mississippi, Montana, Nebraska, Nevada, Ohio, South Dakota, Texas, Utah, Washington, and Wyoming, and add, in its place, the words, ''No additional routes have been federally designated; STAA-dimensioned commercial vehicles may legally operate on all highways which, prior to June 1, 1991, were designated as Federal-aid primary highways.'';

C. By revising the entries for ''New Mexico'' to read as follows:

NEW MEXICO

US 56	I–25 Springer	OK State Line.
US 60	AZ State Line	I–25 Socorro.
US 62	U.S. 285 Carlsbad	TX State Line.
US 64	AZ State Line	NM 516 Farmington.
US 70	AZ State Line	I–10 Lordsburg.
US 70	I–10 Las Cruces	U.S. 54 Tularosa.
US 70	U.S. 285 Roswell	U.S. 84 Clovis.
NM 80	AZ State Line	I–10 Road Forks.
US 84	TX State Line Clovis	CO State Line.
US 87	U.S. 56 Clayton	TX State Line.
US 160	AZ State Line (Four Corners).	CO State Line.
US 285	TX State Line s. of Carlsbad.	CO State Line.
NM 491	1–40 Gallup	CO State Line.
US 516	U.S. 64 Farmington	U.S. 550 Aztec.
US 550	NM 516 Aztec	CO State Line.
US 666	I–40 Gallup	CO State Line.

Appendix B to Part 658—Grandfathered Semitrailer Lengths

15. Amend appendix B to Part 658 in footnotes 1,2, and 3 by removing the reference ''23 CFR 658.13(h)'' and by adding in its place ''23 CFR 658.13(g)'' each place it appears.

[FR Doc. E6–6422 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–033]

RIN 1625–AA08

Special Local Regulations for Marine Events; Pamlico River, Washington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the ''SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix'', a marine event to be held August 4 and August 6, 2006, on the waters of the Pamlico River, near Washington, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Pamlico River during the event.

DATES: Comments and related material must reach the Coast Guard on or before May 31, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, fax them to (757) 398–6203, or e-mail them to *Dennis.M.Sens@uscg.mil*. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–033), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Coast Guard at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

On August 4 and August 6, 2006, Super Boat International Productions will sponsor the ''SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix'', on the Pamlico River, near Washington, North Carolina. The event will consist of approximately 40 high-speed powerboats racing in heats along a 5-mile oval course on August 4 and 6, 2006. Preliminary speed trials along a straight one-kilometer course will be conducted on August 4, 2006. Approximately 20 boats will participate in the speed trials. Approximately 100 spectator vessels will gather nearby to view the speed trials and the race. If either the speed trials or races are postponed due to weather, they will be held the next day. During the speed trials and the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Pamlico River near Washington, North Carolina. The temporary special local regulations will be enforced from 6:30 a.m. to 12:30 p.m. on August 4, 2006, and from 10:30 a.m. to 4:30 p.m. on August 6, 2006. If either the speed trials or races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day. The effect of the temporary special local regulations will be to restrict general navigation in the regulated area during the speed trials and races. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Non-participating vessels will be allowed to transit the regulated area between races, when the Coast Guard Patrol Commander determines it is safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

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

Although this proposed regulation will prevent traffic from transiting a portion of the Pamlico River near Washington, North Carolina during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers, so mariners can adjust their plans accordingly. Vessel traffic may be able to transit the regulated area between races, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit this section of the Pamlico River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 6:30 a.m. to 12:30 p.m. on August 4, 2006 and from 10:30 a.m. to 4:30 p.m. on August 6, 2006. The regulated area will apply to a segment of the Pamlico River near the Washington, North Carolina waterfront. Marine traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels will be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we would issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can 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 the Coast Guard at the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 100.35T–05–033 to read as follows:

§ 100.35T–05–033 Pamlico River, Washington, North Carolina.

(a) *Regulated area.* The regulated area is established for the waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ North, longitude 076°59′23″ West, to Broad Creek Point at latitude 35°29′04″ North, longitude 076°58′44″ West, and bounded on the north by the Norfolk Southern Railroad Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the ''Fountain Super Boat Grand Prix'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 6:30 a.m. to 12:30 p.m. on August 4, 2006, and from 10:30 a.m. to 4:30 p.m. on August 6, 2006. If either the speed trials or the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day.

Dated: April 21, 2006.

Larry L. Hereth,

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

[FR Doc. E6–6519 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–037]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for ''Thunder over the Boardwalk Airshow'', an aerial demonstration to be held over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This proposed action would restrict vessel traffic in portions of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the aerial demonstration.

DATES: Comments and related material must reach the Coast Guard on or before May 31, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Coast Guard Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–037), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On August 23, 2006, the Atlantic City Chamber of Commerce will sponsor the ''Thunder over the Boardwalk Airshow''. The event will consist of high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of spectator vessels is expected to gather nearby to view the aerial demonstration. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. The regulated area includes a section of the Atlantic Ocean approximately 2.5 miles long, running from Pennsylvania Avenue to Columbia Avenue, and extending approximately 900 yards out from the shoreline. The temporary special local regulations will be enforced from 10:30 a.m. to 3 p.m. on August 23, 2006, and will restrict general navigation in the regulated area during the aerial demonstration. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

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

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

Although this proposed regulation prevents traffic from transiting a portion of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the Atlantic Ocean during the event.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 10:30 a.m. to 3 p.m. on August 23, 2006. Affected waterway users can pass safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see

ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can 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 the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary section, § 100.35T–05–037 to read as follows:

§ 100.35T–05–037 Atlantic Ocean, Atlantic City, NJ.

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: Southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions:*

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or

petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. to 3 p.m. on August 23, 2006.

Dated: April 21, 2006.

Larry L. Hereth,

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

[FR Doc. E6–6518 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter 1

Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

ACTION: Notice of third meeting.

Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the third meeting of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area.

DATES: The Committee will meet on Monday, May 15, 2006 at the Officers's Club at 1 Fort Mason in upper Fort Mason, in San Francisco. The meeting will begin at 3 p.m. This, and any subsequent meetings, will be held to assist the National Park Service in potentially developing a special regulation for dogwalking at Golden Gate National Recreation Area.

The proposed agenda for this meeting of the Committee may contain the following items; however, the Committee may modify its agenda during the course of its work. The Committee will provide for a public comment period during the meeting.

1. Agenda review
2. Approval of April 18 meeting summary
3. Updates since previous meeting
4. No Action Alternative for Dog Management Plan/Environmental Impact Statement (EIS) under National Environmental Policy Act (NEPA)
5. Data inventory
6. Information needs for Negotiated Rulemaking process
7. Decision-making criteria
8. Public comment
9. Adjourn

To request a sign language interpreter for a meeting, please call the park TDD line (415) 556–2766, at least a week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Go to the NPS Planning, Environment and Public Comment (PEPC) Web site, *http://www.parkplanning.nps.gov/goga* and select Negotiated Rulemaking for Dog Management at GGNRA or call the Dog Management Information Line at 415–561–4728.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to consider developing a special regulation for dogwalking at Golden Gate National Recreation Area. Interested persons may provide brief oral/written comments to the Committee during the Public Comment period of the meeting or file written comments with the GGNRA Superintendent.

Dated: April 18, 2006.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. E6–6486 Filed 4–28–06; 8:45 am]

BILLING CODE 4312–FN–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU70

Subsistence Management Regulations for Public Lands in Alaska, Subpart A; Makhnati Island Area

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the jurisdiction of the Federal Subsistence Management Program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, Alaska. This would then allow Federal subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in Federal Subsistence Management regulations.

DATES: We must receive your written public comments on this proposed rule no later than June 15, 2006.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that ''the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *'' and that ''continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened * * *.'' As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a program to provide for rural Alaska residents a priority for the taking for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, priority, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural priority in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* caused the State to delete the rural priority from the subsistence statute which therefore

negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990. As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Departments published the Temporary Subsistence Management Regulations for Public Lands in Alaska in the **Federal Register** (55 FR 27114). Permanent regulations were jointly published on May 29, 1992 (57 FR 22940), and have been amended since then.

As a result of this joint process between Interior and Agriculture, these regulations can be found in the Code of Federal Regulations (CFR) both in title 36, ''Parks, Forests, and Public Property,'' and title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain the following subparts: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), and December 27, 2005 (70 FR 76400), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program, as established by the Secretaries. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management (BLM); the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Jurisdictional Perspective

Federal Subsistence Management Regulations (50 CFR 100.3 and 36 CFR 242.3) currently specify that ''The public lands described in paragraphs (b) and (c) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.'' In April 2005, the Board requested a review by the U.S. Department of the Interior's, Office of the Solicitor to determine whether a Federal interest presently exists in certain areas of southeastern Alaska. The specific areas were originally identified by the Sitka Tribe of Alaska and presented before the Southeast Alaska Subsistence Regional Advisory Council, who forwarded a request for review to the Board. In November 2005, the Office of the Solicitor responded that the Makhnati Island area withdrawal in Executive Order 8877 (August 29, 1941) was not rescinded until after statehood, so the submerged land did not transfer to the State of statehood. Since this submerged land is not included in any other withdrawal, reservation, or administrative setaside, the marine submerged lands, including any filled lands owned by the United States, are under the administration of the BLM. Accordingly, the Solicitor's Office indicated that this area should be included within the jurisdiction of the Federal Subsistence Management Program. See 70 FR 76400 (December 27, 2005).

The specific area encompasses approximately 610 acres of land and water adjacent to Japonski Island. Whiting Harbor and numerous small islands are included within the boundary of the withdrawal. The Board recommends the inclusion of this area in the Federal Subsistence Management Program. Therefore, we propose to amend the Federal Subsistence Management Regulations for Public Lands in Alaska to reflect Federal subsistence management jurisdiction in the area of Makhnati Island, near Sitka, Alaska.

We propose to amend Section ____3(b), which includes those areas where marine waters are included, and where the regulations contained in 50 CFR 100 and 36 CFR 242 apply to both navigable and non-navigable waters. If additional marine submerged lands are determined in the future to be held by the United States, those additional lands would be the subject of future rulemakings.

Because the Federal Subsistence Management Program relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, we would propose to incorporate identical text into 36 CFR part 242 and 50 CFR part 100.W

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described in major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis, and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C, published May 29, 1992, implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. The following **Federal Register** documents pertain to this rulemaking:

FEDERAL REGISTER DOCUMENTS PERTAINING TO SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A AND B

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the **Federal Register**.
64 FR 1276	January 8, 1999	Final Rule (amended)	Amended to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation. Specified and clarified Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	In response to comments on an interim rule, amended the operating regulations. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	This rule clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Received no adverse comments on the direct final rule (68 FR 7703). Adopted direct final rule.
68 FR 60957	October 14, 2004	Final Rule	Established Regional Council membership goals.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment, and therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but that the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain no new information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described in the rule were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires August 31, 2006. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The number of businesses and the amount of trade that will result from this Federal land-related activity is unknown but expected to be insignificant.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.* requires preparation of regulatory flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on

a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that about 26.2 million pounds of fish (including about 9 million pounds of salmon) are harvested Statewide by the local subsistence users annually and, if based on a replacement value of $3.00 per pound, would equate to $78.6 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or tribal governments.

The Service has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless their program is compliant with the requirements of that Title.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

William Knauer drafted these regulations under the guidance of Thomas H. Boyd of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Dennis Tol and Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; San Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Warren Eastland, Pat Petrivelli, and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Secretaries propose to amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 would continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart A—General Provisions

2. In Subpart A of 36 CFR part 242 and 50 CFR part 100, § ____.3 would be amended by adding paragraph (b)(5) to read as follows:

§ ____.3 Applicability and scope.

* * * * *

(b) * * *

(5) Southeastern Alaska—Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°21′35″ north latitude, 135°21′07″ west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3000 feet, to a point, 57°03′15″ north latitude, 135°23′07″ west longitude; East, 2900 feet, to a point in course No. 46 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; Southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1496 to angle point No. 35, on the Southwestern point of Japonski Island; S. 60° E., 3300 feet, along the boundary line of Naval reservation described in Executive order No. 8216, July 25, 1939, to the point beginning.

* * * * *

Dated: March 22, 2006.

P. Lynn Scarlett,

Secretary of the Interior, Department of the Interior.

Dated: April 4, 2006.

Dennis E. Bschor,

Regional Forester, USDA-Forest Service.

[FR Doc. 06–4012 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0021; FRL–8163–7]

RIN 2060–AM30

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for site remediation activities that were promulgated on October 8, 2003, to control emissions of hazardous air pollutants (HAP) from site remediation activities. We are proposing to amend specific provisions to resolve issues and questions subsequent to promulgation; correct technical omissions; and correct

typographical, cross-reference, and grammatical errors.

DATES: *Comments.* Comments on the proposed amendments must be received on or before June 30, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 22, 2006, a public hearing will be held on May 31, 2006.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0021, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *By Facsimile:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, U.S. EPA, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* EPA Docket Center, Docket ID Number EPA–HQ–OAR–2002–0021, EPA West Building, 1301 Constitution Ave., NW., Room B102, Washington, DC, 20004. Such deliveries are accepted only 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–2002–0021. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://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.*

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Chemicals and Coatings Group, Sector Policies and Programs Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–3078, facsimile number (919) 541–3207, electronic mail (e-mail) address: *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION:

Entities Table. Entities potentially affected by this proposed action include, but are not limited to, the following:

Category	NAICS [1]	Examples of regulated entities
Industry	325211 325192 325188 32411 49311 49319 48611 42269 42271	Site remediation activities at businesses at which materials containing organic HAP currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include: Organic liquid storage terminals, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with co-located site remediation activities.
Federal Government		Federal agency facilities that conduct site remediation activities to clean up materials contaminated with organic HAP.
State/Local/Tribal Government		Tribal governments that conduct site remediation activities to clean up materials contaminated with organic HAP.

[1] North American Industry Classification System (NAICS) code. Representative industrial codes at which site remediation activities have been or are currently conducted at some but not all facilities under a given code. The list is not necessarily comprehensive as to the types of facilities at which a site remediation cleanup may potentially be required either now or in the future.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action.

A comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by the rule due to the nature of activities regulated by the source category. The industrial code alone for a given facility does not determine whether the facility is or is not potentially subject to the rule. The rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic HAP and other hazardous material. Thus, for many businesses and facilities subject to the rule, the regulated sources (i.e., the site remediation activities) are not the predominant activity, process, operation, or service conducted at the facility. In these cases, the industrial code indicates a primary product produced or service provided at the facility rather than the presence of a site remediation at the facility. For example,

NAICS code classifications where site remediation activities are currently being performed at some but not all facilities include, but are not limited to, petroleum refineries (NAICS code 32411), industrial organic chemical manufacturing (NAICS code 3251xx), and plastic materials and synthetics manufacturing (NAICS code 3252xx). However, we are also aware of site remediation activities potentially subject to the rule being performed at facilities listed under NAICS codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in the 40 CFR part 63, subpart GGGGG—National Emissions Standards for Hazardous Air Pollutants: Site Remediation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

WorldWide Web (WWW). Following the Administrator's signature, a copy of the proposed amendments will be posted on the Technology Transfer Network's (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Public Hearing. If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby. Contact Mr. Greg Nizich at 919–541–3078 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location.

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

I. Background
II. Proposed Amendments
A. Short-Term Site Remediation Exemption
B. Point of Determination of Remediation Material Volatile Organic HAP (VOHAP) Concentration
C. 1 Mg/yr Site Remediation Exemption
D. Requirements for Remediation Material Transferred Off-Site
E. Requirements for Equipment Leaks
F. Applicability Determination for Remediation Activities at Certain Oil and Natural Gas Production Facilities
G. Other Rule Editorial Corrections
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Background

We promulgated subpart GGGGG, National Emission Standards for Hazardous Air Pollutants: Site Remediation, in 40 CFR part 63 on October 8, 2003 (68 FR 58172). Subpart GGGGG applies to owners and operators of facilities that are major sources of HAP emissions and where a site remediation is conducted that meets the definitions and conditions specified in the final rule. Certain types of site remediations are explicitly exempted from being subject to the final rule. Each site remediation subject to the final rule must meet the emission limitation and work practice standards in subpart GGGGG that apply to the source types (e.g., process vents, tanks, containers, equipment components) used to perform or associated with the site remediation activities.

Since the promulgation of subpart GGGGG of 40 CFR part 63, we have received questions about our interpretation of specific provisions in the final rule. To clarify these issues, we decided that technical amendments to the final rule are appropriate. Also, as part of today's action, we are proposing to amend other rule language to correct technical omissions, and to correct terminology, typographical, printing, and grammatical errors that we have identified since promulgation. The proposed amendments would not significantly change our original projections for the final rule's compliance costs, environmental benefits, burden on industry, or the number of affected facilities.

A petition for reconsideration for the final rule was filed by the Sierra Club on December 8, 2003. The amendments proposed today do not address any issues cited in the Sierra Club's petition. We are still reviewing the items for reconsideration and will address them in a future notice.

II. Proposed Amendments

We are proposing to amend 40 CFR part 63, subpart GGGGG, to clarify our intent for applying and implementing specific rule requirements and to correct unintentional technical omissions and editorial errors. A summary of the proposed amendments to the final rule and the rationale for these amendments are presented below.

A. Short-Term Site Remediation Exemption

Subpart GGGGG of 40 CFR part 63 provides an exemption for certain short-term site remediations performed at facilities subject to the final rule. Specifically, site remediations where the cleanup of a contaminated area at the facility can be completed within 30 consecutive calendar days are exempted from the air emission control requirements in subpart GGGGG. This exemption is included in the final rule to facilitate the prompt cleanup of contamination resulting from small spills or similar events where the facility owner or operator can quickly complete the cleanup in a short period of time. Following promulgation of the rule, we received requests to clarify how the 30-day limit is implemented.

As we discussed in the preamble to the final rule (68 FR 58185), the time interval for this exemption is based on the time required to complete those remediation activities that actually emit or have a potential to emit HAP. Furthermore, this exemption applies to those cleanups of contaminated areas that can reasonably be completed within a period much shorter than 30 days (e.g., several days, 1 to 2 weeks). We chose the 30-day interval specified in the final rule in consideration of those situations where a cleanup at a particular site that normally should be completed within several days or a week takes longer to complete because factors beyond the control of the owner or operator temporarily suspend or delay the remediation activities (such as severe weather or unexpected machinery breakdowns). Therefore, we decided that selecting a maximum of 30 days for the short-term site remediation exemption allows a sufficient extended period to complete cleanups that experience unavoidable delays and provides a reasonable time buffer to account for any unforeseen circumstances that may develop at a site.

It is our intention that the short-term site remediation exemption only applies to those cleanups where all associated activities can be completed within 30 days (including any off-site treatment of the remediation materials) such that the organic HAP constituents in all of the remediation material resulting from the cleanup of the contaminated area no longer have a reasonable potential for volatilizing and being released to the atmosphere. In other words, we do not

consider simply shipping the remediation material generated by the cleanup to another site by the 30th day as complying with the exemption's intended scope. Materials containing organic HAP that are shipped off-site may still have the potential for the organics to volatilize and, consequently, be released to the atmosphere. Unless properly treated or disposed of, the action of shipping the remediation materials to an off-site location effectively just moves the HAP emissions point to another location and extends the time available for the organic HAP to be emitted.

We are proposing to amend 40 CFR 63.7884 to clarify the final rule language with respect to our intent for application of the short-term remediation exemption, including those situations when the remediation material is transferred off-site. The proposed amendment language would explicitly define the beginning and end of the 30-day exemption period. Within this 30-day period, regardless of the location where the treatment or disposal occurs (i.e., either on-site or at another facility), final treatment or disposal of all remediation material generated during the cleanup would need to be completed.

The first day of the 30-day exemption period would be defined as the day on which you initiate any action that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. Consistent with the exemption under the existing rule, the following activities, when completed before beginning this initial action, would not be counted as part of the 30-day period: Activities to characterize the type and extent of the contamination by collecting and analyzing samples; activities to obtain permits from Federal, State, or local authorities to conduct the site remediation; activities to schedule workers and necessary equipment; and activities to arrange for contractor or third party assistance in performing the site remediation.

The last day of the exemption period would be defined as the day on which all of the remediation materials generated by the cleanup have been treated or disposed of (either at the cleanup site or another site) in a manner such that the organic HAP in the material no longer have a reasonable potential for volatilizing and being released to the atmosphere. This means the final treatment or disposal of all of the remediation material must be completed within the 30-day period following initiation of the cleanup. A site remediation where the only activities completed are excavating or otherwise removing the contaminated material, and then storing this material (e.g., in waste piles, tanks, or containers) during the 30-day period does not qualify for the exemption. In this case, the processes and equipment used for site remediation would need to meet the applicable emissions limitations and work practice standards in the final rule (unless the site remediation qualifies for another exemption allowed under the final rule).

Similarly, simply shipping all the remediation material off-site by the 30th day does not meet the conditions of the exemption. If the remediation materials generated by a cleanup are shipped off-site for treatment or disposal, then the owner or operator would be required to complete the transfer of all of the materials to a facility where these materials would be treated or disposed of within the 30-day period such that the organic HAP constituents in the materials no longer have a reasonable potential for volatilizing and subsequent release to the atmosphere. In situations when the off-site treatment or disposal of the remediation material cannot be completed within the 30-day period, then the remediation material is subject to 40 CFR 63.7936 of subpart GGGGG which specifies the requirements you must meet when you transfer remediation material off-site.

B. Point of Determination of Remediation Material Volatile Organic HAP (VOHAP) Concentration

Subpart GGGGG of 40 CFR part 63 establishes standards to control organic HAP emissions from certain remediation material management units (i.e., tanks, surface impoundments, containers, oil/water separators, organic/water separators and transfer systems) used for remediation activities. The final rule requires that those units managing remediation material with an average VOHAP concentration equal to or greater than 500 parts per million by weight (ppmw), meet the applicable emission limitation and work practice standards for the remediation material management unit specified in the rule. If the VOHAP concentration of the material is less than 500 ppmw, then the remediation material management units handling this material are not required to meet the air emission control requirements in subpart GGGGG. The VOHAP concentration is based on the organic HAP content of the remediation material determined by either direct measurement of samples of the remediation material or through use of knowledge of the remediation material (i.e., application of the owner's or operator's expertise using appropriate information regarding the remediation material).

As promulgated, subpart GGGGG of 40 CFR part 63 requires the VOHAP concentration for the remediation material to be determined at the ''point-of-extraction.'' This term is defined to be a point above ground where you can collect samples of a remediation material before, or at the first point where, organic constituents in the material have the potential to volatilize and be released to the atmosphere, and (in all instances) before placing the material in a remediation material management unit.

This point of determination is different from the definition we originally proposed for subpart GGGGG of 40 CFR part 63. In the proposed rule, the VOHAP concentration of the remediation material was specified to be determined at a point prior to, or within, a remediation material management unit, provided that organic constituents in the material have not been allowed to volatilize and be released to the atmosphere. This approach was discussed in the preamble to the proposed rule (67 FR 49408) and proposed in 40 CFR 63.7882(c)(4)(i) and 40 CFR 63.7912(a). We proposed this approach because it simplifies the determination procedure for the wide variety of treatment and management processes that can be used for site remediation activities.

The approach addresses situations not only when there is a single remediation material stream, but also those situations when there are two or more combined material streams (either only remediation materials or remediation materials with non-remediation materials). If a single material stream (or combination of streams) having a VOHAP concentration of 500 ppmw or greater is managed in a remediation material management unit, then the unit is subject to the air emission control requirements for the particular unit, as specified in the final rule. If at a further downstream point, the VOHAP concentration of the material falls below the 500 ppmw action level following treatment, the material no longer needs to be managed in units that meet the applicable air emission control requirements in subpart GGGGG of 40 CFR part 63 (however, these units would still need to comply with any applicable control under other Federal or State air rules). Similarly, if the VOHAP concentration of a remediation material through processing or other means is increased in a remediation material management unit to a level at or greater than the 500 ppmw action

level, that unit will need to use the appropriate controls specified in subpart GGGGG.

We received no adverse public comment on the proposed approach. We did, however, receive unrelated adverse public comments stating that the format we used for the proposed rule (e.g., reliance on presenting many rule requirements in an exclusively tabular format and extensive cross-referencing to provisions in other subparts in 40 CFR part 63) made the rule difficult to read and understand. In response to these comments, we significantly revised the editorial format and organization of the final rule. In doing so, the rule language we proposed designating the point where the VOHAP concentration of a remediation material is to be determined for the purpose of identifying those remediation material management units not subject to the rule's air emission control requirements (i.e., units managing remediation material having a VOHAP concentration less than the 500 ppmw action level) was unintentionally misstated when we converted this provision to the new format and wording used for the final rule.

Today's proposed amendments would correct our error by amending the language in subpart GGGGG of 40 CFR part 63 regarding the point where the VOHAP concentration of remediation material is determined, and reinstate the same regulatory approach and language that we used for the proposed rule. This regulatory language would be placed in the appropriate sections of the reformatted final version of subpart GGGGG with appropriate adjustments of terminology and section cross-references consistent with the final rule structure.

In addition, today's proposed amendments would remove the term ''point-of-extraction'' in the final rule since the term no longer is needed to implement any provision of subpart GGGGG of 40 CFR part 63 and would specify that you determine the average total VOHAP concentration of the remediation material at a point prior to or within a remediation material management unit. The applicable regulatory language under the procedures in 40 CFR 63.7943 for determining average VOHAP concentration of a remediation material would also be revised using the original proposal language to the fullest extent possible under the format of the final rule. Thus, we would be implementing our intended approach for determining the VOHAP concentration of the remediation material. Under today's proposed amendments (consistent with our original proposal), once the VOHAP concentration for a remediation material has been determined to be less than 500 ppmw, all remediation material management units downstream from the point of determination managing this material would no longer be required to meet the air emission control requirements in subpart GGGGG unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration of the material increases to 500 ppmw or more (e.g., free-product separation).

C. 1 Mg/yr Site Remediation Exemption

An applicability exemption is provided in 40 CFR 63.7881(c) for a facility that is a major source of HAP and is subject to another subpart under 40 CFR part 63, but where the annual quantity of organic HAP in the materials generated by the site remediations conducted at the facility is less than 1 megagram per year (Mg/yr). Facilities at which the site remediation activities qualify for this exemption are not subject to the final rule except for recordkeeping requirements. The owner or operator is required to maintain records documenting that the total quantity of the organic HAP in the remediation materials generated by site remediations at the facility is less than 1 Mg/yr. This section of the final rule has been wrongly interpreted by some to mean that the 1 Mg/yr limit is applied on an individual site remediation basis. By this interpretation, at a facility where two site remediations are conducted in a year, each site remediation would be allowed to generate remediation materials having total organic HAP content up to 1 Mg/yr resulting in a facilitywide total of 2 Mg/yr, which is not what we intended. This is not how the exemption provisions are to be applied to a facility.

The 1 Mg/yr limit for the exemption is applied on a facilitywide basis. As we stated in the proposal (67 FR 49406), the exemption applies to a facility for which the owner or operator demonstrates that the total annual organic HAP mass content of the remediation material cleaned up at a facility is less than 1 Mg/yr. The mass limit is based on the total organic HAP content of the remediation material at the facility, not the material from an individual site remediation at the facility. There is no restriction on the number of site remediations for which the exemption applies so long as the total organic HAP amount in the remediation materials generated by all of the site remediations conducted at the facility during a year is less than 1 Mg/yr.

To clarify the final rule language with respect to how the small-quantity remediation exemption is to be applied, we are proposing amended language for 40 CFR 63.7881(c). This language would not change how the 1 Mg/yr limit applies nor change the documentation requirements for the exemption now in the final rule, but simply and more explicitly state that the 1 Mg/yr limit applies on a facilitywide, calendar-year basis, and that there is no restriction of the number of site remediations under the exemption.

D. Requirements for Remediation Material Transferred Off-Site

The requirements for owners and operators transferring remediation material, having an average VOHAP concentration of 10 ppmw or greater, to an off-site facility are specified in 40 CFR 63.7936 of subpart GGGGG. This section has been incorrectly interpreted by some to mean that any remediation material transferred off-site with a VOHAP concentration at or above the 10 ppmw action level has some treatment obligation under subpart GGGGG. While we are not proposing to amend the existing language in 40 CFR 63.7936, we are including an explanation here to clarify how the 10 ppmw action level in 40 CFR 63.7936 is applied to remediation material transferred off-site.

The 10 ppmw VOHAP concentration action level in 40 CFR 63.7936 is not used to determine applicability of emissions control or work practice standards under subpart GGGGG of 40 CFR part 63. Rather, the 10 ppmw VOHAP concentration action level is specified because, at or above that VOHAP concentration, some action may be required by both the transferring facility and receiving facility, but further evaluation is needed to be certain if any action is required. If the VOHAP concentration of the transferred remediation material is less than 10 ppmw, there are no requirements under subpart GGGGG of 40 CFR part 63 regarding the off-site transfer and subsequent management of this material. However, if the VOHAP concentration of the transferred remediation material is 10 ppmw or greater, then there are recordkeeping, notification, and possibly air emission control requirements (depending on how the material is managed at the receiving facility) under subpart GGGGG of 40 CFR part 63 that must be met.

The determination of which air emission control requirements in subpart GGGGG of 40 CFR part 63 apply to, or follow, the transferred

remediation material to the receiving facility is based on other action levels in the final rule that are specifically applied to the affected sources regardless of the source location (i.e., the 10 ppmw action level for process vents in 40 CFR 63.7885 and the 500 ppmw action level for remediation material management units in 40 CFR 63.7886). In cases where transferred remediation material, having an average VOHAP concentration of 10 ppmw or greater, is treated or managed at the receiving facility in vented processes that would be affected sources under subpart GGGGG if located at the transferring facility (40 CFR 63.7882(a)(1)), then these processes must comply with the air emission control requirements for process vents in the final rule (40 CFR 63.7885).

In cases where transferred remediation material having an average VOHAP concentration of 500 ppmw or greater is treated or managed at the receiving facility in remediation material management units that would be affected sources under subpart GGGGG (40 CFR 63.7882(a)(2)), these units must comply with the applicable air emission control requirements in the final rule (40 CFR 63.7886). If instead the average VOHAP concentration of the transferred remediation material placed in these remediation material management units at the receiving facility is 10 ppmw or greater but less than 500 ppmw, then the units are not required to meet the air emission control requirements in subpart GGGGG. The only requirement is to document why the transferred remediation material is not subject to the air emission control requirements in subpart GGGGG (i.e., the VOHAP concentration of the material is below the 500 ppmw action level).

E. Requirements for Equipment Leaks

The general standards in subpart GGGGG of 40 CFR part 63 for process vents and for remediation material management units provide owners and operators an alternative compliance option for those units that are already using air pollution controls to comply with another subpart under 40 CFR part 61 or 40 CFR part 63. Under this option, your unit is not subject to air emission control requirements in subpart GGGGG if the unit is controlled in compliance with the standards specified in the applicable subpart of 40 CFR part 61 or 40 CFR part 63. This means the unit meets all applicable emissions limitations and work practice standards under the other subpart (e.g., you install and operate the required air emission control devices or have implemented the required work practice to reduce HAP emissions to levels specified by the applicable subpart). This provision only applies if the other subpart actually specifies a standard requiring control of HAP emissions from your affected process vents. It does not apply to any exemption of the affected source from using air pollution controls allowed by the other applicable subpart. This compliance option under subpart GGGGG was included in the proposed rule for both process vents and remediation material management units. We received no adverse public comments on allowing this compliance option.

The general standards in subpart GGGGG of 40 CFR part 63 do not include a comparable compliance option for those affected equipment leak sources associated with a site remediation that are already using air pollution controls to comply with another subpart under 40 CFR part 61 or 40 CFR part 63. There is no reason not to extend the same compliance option that subpart GGGGG allows for process vents and remediation material management units to equipment leak sources. The exclusion of this type of compliance option under the general standards for equipment leaks from the final rule was an oversight on our part. Therefore, the proposed amendments would add to the general standards for equipment leaks in 40 CFR 63.7887 a compliance option for those affected equipment leak sources that are already using air pollution controls or work practices to comply with another subpart under 40 CFR part 61 or 40 CFR part 63. The proposed regulatory language for this option effectively is the same (with minor wording changes appropriate to equipment leak sources) as used in the final rule for process vents and for remediation material management units that are already using air pollution controls to comply with another subpart under 40 CFR part 61 or 40 CFR part 63.

F. Applicability Determination for Remediation Activities at Certain Oil and Natural Gas Production Facilities

Since promulgation of the final rule, we have been notified that provisions in the Clean Air Act (CAA) providing special consideration for activities located at certain oil and natural gas production field facilities were not incorporated into the Site Remediation NESHAP. These provisions, under section 112(n)(4)(A) of the CAA, have resulted in incorporation of regulatory text in other regulations that often apply to oil and natural gas production field facilities such as the Oil and Natural Gas Production NESHAP. These provisions were not accounted for in the Site Remediation NESHAP proposed on July 30, 2002. In addition, the issue was not raised by commenters on the proposed rule and, as a result, the final rule does not treat emissions at oil and natural gas production fields differently from those at any other location. Since we believe regulations must be consistent with the CAA, we are proposing amendments to the applicability provisions of the Site Remediation NESHAP to further that outcome. Section 112(n)(4)(A) states:

> Notwithstanding the provisions of subsection (a) of this section, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil and gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

In the Oil and Natural Gas Production NESHAP, 40 CFR part 63 subpart HH, we address the provisions of section 112(n)(4)(A) by limiting the emission points that can be aggregated in the major source determination process at production field facilities. In order to be consistent with both the Oil and Natural Gas Production NESHAP, and section 112 of the CAA, we are proposing amendments to the Site Remediation NESHAP to limit emissions aggregation for major source status determination at production field facilities only, to glycol dehydration units, storage vessels with flash emission potential and site remediation activities. The terms ''production field facility,'' ''glycol dehydration unit,'' and ''storage vessel with the potential for flash emissions'' are all defined terms under the Oil and Natural Gas Production NESHAP (40 CFR 63.761) and will be referenced under the proposed amendments to the Site Remediation NESHAP.

G. Other Rule Editorial Corrections

Table 1 to subpart GGGGG of 40 CFR part 63 lists the specific organic chemical compounds, isomers, and mixtures that are HAP for purposes of implementing the requirements of subpart GGGGG. The version of table 1 to subpart GGGGG published in October 2003 inadvertently included a listing for the compound 1,1-dimethyl hydrazine that we stated in the preamble for the final rule should not have been listed in the table (68 FR 58175). The proposed

amendments would replace table 1 to subpart GGGGG with the correct version of the table excluding the listing for 1,1-dimethyl hydrazine.

Amendments to the regulatory language throughout 40 CFR part 63, subpart GGGGG, are proposed to correct terminology, typographical, section cross-reference, or grammatical errors. These amendments would not change any of the technical or administrative requirements of the final rule.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this action a ''significant regulatory action'' within the meaning of the Executive Order. The EPA 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

This action does not impose any new information collection burden. The proposed amendments would result in no changes to the information collection requirements of the existing rule. OMB has previously approved the information collection requirements contained in 40 CFR part 63, subpart GGGGG, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2060–0534, EPA ICR number 2062.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby; Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW.; Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

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 today's proposed rule amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities that may be directly regulated by the proposed rule include small businesses and small governmental jurisdictions. We have determined that there would be little or no impact on any affected small entities because the proposed rule amendments would amend existing regulations to clarify specific provisions and to correct technical omissions and editorial errors. We continue to be interested in the potential impacts of the proposed rule amendments 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 adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule amendments contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal

governments or the private sector. The proposed rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the proposed rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, the proposed rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the proposed rule amendments are not subject to the requirements of section 203 of the UMRA.

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.''

The proposed rule amendments do not have federalism implications. Today's action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule amendments would amend existing regulations to clarify specific provisions in the existing regulations and to correct technical omissions and editorial errors. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule amendments from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed rule amendments do not have tribal implications, as specified in Executive Order 13175. Today's action will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

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

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

The proposed rule is not subject to the Executive Order because it is not economically significant as defined under Executive Order 12866, and because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's action is based on technology performance and not on health or safety risks and therefore is not subject to Executive Order 13045.

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

Today's action is not a significant energy action: as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it only clarifies our intent and corrects errors in the existing rule. Further, we have concluded that the proposed rule amendments are not likely to have any adverse energy effects.

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 us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 25, 2006.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart GGGGG—[Amended]

2. Section 63.7881 is amended by revising paragraphs (a)(3) and (c) to read as follows:

§ 63.7881 Am I subject to this subpart?

(a) * * *

(3) Your facility is a major source of HAP as defined in § 63.2, except that for facilities that are production field facilities, as defined in § 63.761, only HAP emissions from glycol dehydration units, storage vessels with the potential for flash emissions (both as defined in § 63.761), and site remediation activities shall be aggregated for a major source determination. A major source emits or has the potential to emit any single HAP at the rate of 10 tons (9.07 megagrams) or more per year or any combination of

HAP at a rate of 25 tons (22.68 megagrams) or more per year.

* * * * *

(c) Your site remediation activities are not subject to the requirements of this subpart, except for the recordkeeping requirements in this paragraph (c), if the total quantity of the HAP listed in Table 1 to this subpart that is contained in the remediation material excavated, extracted, pumped, or otherwise removed during all of the site remediations conducted at your facility in a calendar year is less than 1 megagram per year (Mg/yr). This exemption applies the 1 Mg/yr limit on a facilitywide, calendar-year basis and there is no restriction of the number of site remediations that can be conducted during this period. You must prepare and maintain at your facility written documentation to support your determination that the total HAP quantity in your remediation materials for the year is less than 1 Mg. The documentation must include a description of your methodology and data used for determining the total HAP content of the remediation material.

* * * * *

3. Section 63.7884 is revised to read as follows:

§ 63.7884 What are the general standards I must meet for each site remediation with affected sources?

(a) For each site remediation with affected sources designated under § 63.7882, you must meet the standards specified in §§ 63.7885 through 63.7955, as applicable to your affected sources, unless your site remediation meets the requirements for an exemption under paragraph (b) of this section.

(b) A site remediation that is completed within 30 consecutive calendar days according to the conditions in paragraphs (b)(1) through (3) of this section is not subject to the standards under paragraph (a) of this section. This exemption cannot be used for a site remediation involving the staged or intermittent cleanup of remediation material whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals with durations less than 30-days per interval for which the total time of all of the intervals required to complete the site remediation exceeds a total of 30 days.

(1) The 30 consecutive calendar day period for a site remediation that qualifies for this exemption is determined according to actions taken by you as defined in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) The first day of the compliance period is defined as the day on which you initiate any action that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. The following activities, when completed before beginning this initial action, are not counted as part of the 30-day period: Activities to characterize the type and extent of the contamination by collecting and analyzing samples; activities to obtain permits from Federal, State, or local authorities to conduct the site remediation; activities to schedule workers and necessary equipment; and activities to arrange for contractor or third party assistance in performing the site remediation.

(ii) The last day of the compliance period is defined as the day on which treatment or disposal of all of the remediation materials generated by the cleanup is completed such that the organic constituents in these materials no longer have a reasonable potential for volatilizing and being released to the atmosphere.

(2) For the purpose of complying with this paragraph (b)(2), if you ship or otherwise transfer the remediation material off-site you must complete the transfer of all of the material to a facility where your remediation material will be treated or disposed within the 30-day period such that the organic constituents in these materials no longer have a reasonable potential for volatilizing and being released to the atmosphere. If remediation material is to be shipped or otherwise transferred to an off-site facility where the final treatment or disposal of the material cannot be completed within the 30-day period, then the transfer (and subsequent management) of this material is subject to the requirements specified in § 63.7936.

(3) You must prepare and maintain at your facility written documentation describing the exempted site remediation, and listing the initiation and completion dates for the site remediation.

4. Section 63.7886 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7886 What are the general standards I must meet for my affected remediation material management units?

* * * * *

(b) * * *

(2) You determine that the average total VOHAP concentration, as defined in § 63.7957, of the remediation material managed in the remediation material management unit material is less than 500 ppmw. You must follow the requirements in § 63.7943 to demonstrate that the VOHAP concentration of the remediation material is less than 500 ppmw. Once the VOHAP concentration for a remediation material has been determined to be less than 500 ppmw, all remediation material management units downstream from the point of determination managing this material meet the requirements of this paragraph unless a remediation process is used that concentrates all, or part of, the remediation material being managed in the unit such that the VOHAP concentration of the material could increase (e.g., free-product separation).

* * * * *

5. Section 63.7887 is revised to read as follows:

§ 63.7887 What are the general standards I must meet for my affected equipment leak sources?

(a) You must control HAP emissions from equipment leaks from each equipment component that is part of the affected source by implementing leak detection and control measures according to the standards specified in §§ 63.7920 through 63.7922 unless you elect to meet the requirements in paragraph (b) of this section.

(b) If the affected equipment leak source is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, you may control emissions of the HAP listed in Table 1 to this subpart from the affected equipment leak source in compliance with the standards specified in the other applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (e.g., you implement leak detection and control measures to reduce HAP emissions as specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

6. Section 63.7890 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7890 What emissions limitations and work practice standards must I meet for process vents?

* * * * *

(b) * * *

(2) Reduce from all affected process vents the emissions of total organic compounds (TOC) (minus methane and ethane) to a level below 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy); or

* * * * *

7. Section 63.7893 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.7893 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for process vents?

* * * * *

(b) You must maintain emission levels from all of your affected process vents to meet the facilitywide emission limits in § 63.7890(b) that apply to you, as specified in paragraphs (b)(1) through (4) of this section.

* * * * *

8. Section 63.7896 is amended by revising paragraph (b)(2) to read as follows:

§ 63.7896 How do I demonstrate initial compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(b) * * *

(2) You have determined, according to the procedures in § 63.7944, and recorded the maximum HAP vapor pressure of the remediation material placed in each affected tank subject to § 63.7886(b)(1)(i) that does not use Tank Level 2 controls.

* * * * *

9. Section 63.7898 is amended by revising paragraph (e)(2) to read as follows:

§ 63.7898 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(e) * * *

(2) Visually inspecting the external floating roof according to the requirements in § 63.1063(d)(1) and inspecting the seals according to the requirements in § 63.1063(d)(2) and (3).

* * * * *

10. Section 63.7903 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 63.7903 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for containers?

(a) You must demonstrate continuous compliance with the emission limitations and work practice standards in § 63.7900 applicable to your affected containers by meeting the requirements in paragraphs (b) through (e) of this section.

(b) You must demonstrate continuous compliance with the requirement to determine the applicable container control level specified in § 63.7900(b) for each affected container by meeting the requirements in paragraphs (b)(1) through (3) of this section.

* * * * *

11. Section 63.7913 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.7913 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for separators?

* * * * *

(c) You must demonstrate continuous compliance for each separator using a fixed roof vented through a closed vent system to a control device according to § 63.7910(b)(2) by meeting the requirements in paragraphs (c)(1) through (6) of this section.

* * * * *

12. Section 63.7915 is amended by revising paragraph (c)(2) to read as follows:

§ 63.7915 What emissions limitations and work practice standards must I meet for transfer systems?

* * * * *

(c) * * *

(2) A transfer system that consists of continuous hard-piping. All joints or seams between the pipe sections must be permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed flange).

* * * * *

13. Section 63.7917 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 63.7917 What are my inspection and monitoring requirements for transfer systems?

* * * * *

(c) If you operate a transfer system consisting of hard piping according to § 63.7917(c)(2), you must annually inspect the unburied portion of pipeline and all joints for leaks and other defects.* * *

* * * * *

14. Section 63.7918 is amended by revising paragraph (e) introductory text to read as follows:

§ 63.7918 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for transfer systems?

* * * * *

(e) You must demonstrate continuous compliance for each transfer system that is enclosed and vented to a control device according to § 63.7915(c)(3) by meeting the requirements in paragraphs (e)(1) through (5) of this section.

* * * * *

15. Section 63.7927 is amended by revising paragraph (b)(3) to read as follows:

§ 63.7927 What are my inspection and monitoring requirements for closed vent systems and control devices?

* * * * *

(b) * * *

(3) Use a CPMS to measure and record the hourly average temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle).

* * * * *

16. Section 63.7928 is amended by revising paragraphs (b)(6), (b)(7) and (c) introductory text to read as follows:

§ 63.7928 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for closed vent systems and control devices?

* * * * *

(b) * * *

(6) If the closed vent system is equipped with a flow indicator, recording the information in § 63.693(c)(2)(i).

(7) If the closed vent system is equipped with a seal or locking device, visually inspecting the seal or closure mechanism at least monthly according to the requirements in § 63.693(c)(2)(ii), and recording the results of each inspection.

(c) You must demonstrate continuous compliance of each control device subject to the emissions limits in § 63.7925(d) with the applicable emissions limit in § 63.7925(d) by meeting the requirements in paragraph (c)(1) or (2) of this section.

* * * * *

17. Section 63.7937 is amended by revising paragraphs (c)(2) and (c)(4)(ii) to read as follows:

§ 63.7937 How do I demonstrate initial compliance with the general standards?

* * * * *

(c) * * *

(2) If the remediation material managed in the affected remediation material management unit has an average total VOHAP concentration less than 500 ppmw according to § 63.7886(b)(2), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have determined, according to the procedures in § 63.7943, and recorded the average VOHAP concentration of the remediation material placed in the affected remediation material management unit.

* * * * *

(4) * * *

(ii) You will monitor the biological treatment process conducted in each

unit according to the requirements in § 63.684(e)(4).

* * * * *

18. Section 63.7938 is amended by revising paragraph (c)(4)(ii) to read as follows:

§ 63.7938 How do I demonstrate continuous compliance with the general standards?

* * * * *

(c) * * *

(4) * * *

(ii) Monitoring the biological treatment process conducted in each unit according to the requirements in § 63.7886(4)(i).

* * * * *

19. Section 63.7940 is amended by revising paragraph (c) to read as follows:

§ 63.7940 By what date must I conduct performance tests or other initial compliance demonstrations?

* * * * *

(c) For new sources, you must conduct initial performance tests and other initial compliance demonstrations according to the provisions in § 63.7(a)(2).

20. Section 63.7941 is amended as follows:

a. Revise paragraph (c);

b. Revise paragraph (g); and

c. Remove and reserve paragraph (h).

§ 63.7941 How do I conduct a performance test, design evaluation, or other type of initial compliance demonstration?

* * * * *

(c) If you use a carbon adsorption system, condenser, vapor incinerator, boiler, or process heater to meet an emission limit in this subpart, you may choose to perform a design evaluation to demonstrate initial compliance instead of a performance test. You must perform a design evaluation according to the general requirements in § 63.693(b)(8) and the specific requirements in § 63.693(d)(2)(ii) for a carbon adsorption system (including establishing carbon replacement schedules and associated requirements), § 63.693(e)(2)(ii) for a condenser, § 63.693(f)(2)(ii) for a vapor incinerator, or § 63.693(g)(2)(i)(B) for a boiler or process heater.

* * * * *

(g) If you are required to conduct a visual inspection of an affected source, you must conduct the inspection according to the procedures in § 63.906(a)(1) for Tank Level 1 controls, § 63.1063(d) for Tank Level 2 controls, § 63.926(a) for Container Level 1 controls, § 63.946(a) for a surface impoundment equipped with a floating membrane cover, § 63.946(b) for a surface impoundment equipped with a cover and vented to a control device, § 63.1047(a) for a separator with a fixed roof, § 63.1047(c) for a separator equipped with a fixed roof and vented to a control device, § 63.695(c)(1)(i) or (c)(2)(i) for a closed vent system, and § 63.964(a) for individual drain systems.

(h) [Reserved]

* * * * *

21. Section 63.7943 is amended as follows:

a. Revise paragraph (a);

b. Revise paragraph (b) introductory text;

c. Revise paragraphs (b)(1) introductory text and (b)(3); and

d. Revise paragraph (c) introductory text.

§ 63.7943 How do I determine the average VOHAP concentration of my remediation material?

(a) General requirements. You must determine the average total VOHAP concentration of a remediation material using either direct measurement as specified in paragraph (b) of this section or by knowledge as specified in paragraph (c) of this section. These methods may be used to determine the average VOHAP concentration of any material listed in (a)(1) through (3) of this section.

(1) A single remediation material stream; or

(2) Two or more remediation material streams that are combined prior to, or within, a remediation material management unit or treatment process; or

(3) Remediation material that is combined with one or more non-remediation material streams prior to, or within, a remediation material management unit or treatment process.

(b) Direct measurement. To determine the average total VOHAP concentration of a remediation material using direct measurement, you must use the procedures in paragraphs (b)(1) through (3) of this section.

(1) Sampling. Samples of each material stream must be collected from the container, pipeline, or other device used to deliver each material stream prior to entering the remediation material management unit or treatment process in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

* * * * *

(3) Calculations. The average total VOHAP concentration ($\bar{C}$) on a mass-weighted basis must be calculated by using the results for all samples analyzed according to paragraph (b)(2) of this section and Equation 1 of this section as follows:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left(Q_i \times C_i \right) \qquad \text{(Eq. 1)}$$

Where:

$\bar{C}$ = Average VOHAP concentration of the material on a mass-weighted basis, ppmw.

i = Individual sample ''i'' of the material.

n = Total number of samples of the material collected (at least 4 per stream) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of material stream represented by C_i, kilograms per hour (kg/hr).

Q_T = Total mass quantity of all material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample ''i'' as determined according to the requirements of paragraph (b)(2) of this section, ppmw.

(c) Knowledge of the material. To determine the average total VOHAP concentration of a remediation material using knowledge, you must use the procedures in paragraphs (c)(1) through (3) of this section.

* * * * *

22. Section 63.7956 is amended by revising paragraph (c) introductory text to read as follows:

§ 63.7956 Who implements and enforces this subpart?

* * * * *

(c) The authorities that cannot be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

* * * * *

23. Section 63.7957 is amended by removing the definition of ''Point-of-extraction'' and revising the definitions of ''Deviation'' and ''Transfer system'' to read as follows:

§ 63.7957 What definitions apply to this subpart?

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation (including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or

not such failure is permitted by this subpart.

* * * * *

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within a waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined for this subpart) or a self-propelled vehicle (*e.g.*, a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

* * * * *

24. Table 1 to Subpart GGGGG of Part 63 is revised to read as follows:

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS

CAS No. [a]	Compound name	$F_{m\,305}$
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrichloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether[b]	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon Tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether[b]	1.000
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4–D, salts and esters	0.167
334883	Diazomethane[c]	0.999
132649	Dibenzofurans	0.967
96128	1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene (p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis (2-chloroethylether))	0.757
542756	1,3-Dichloropropene	1.000
79447	Dimethyl carbamoyl chloride[c]	0.150
64675	Diethyl sulfate	0.0025
77781	Dimethyl sulfate	0.086
121697	N,N-Dimethylaniline	0.0008
51285	2,4-Dinitrophenol	0.0077
121142	2,4-Dinitrotoluene	0.0848
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	1.000
106934	Ethylene dibromide (Dibromoethane)	0.999
107062	Ethylene dichloride (1,2-Dichloroethane)	1.000
151564	Ethylene imine (Aziridine)	0.867
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers[d] that have a Henry's Law Constant value equal to or greater than 0.1 Y/X(1.8×10^{-6} atm/gm-mole/m^3) at 25 °C.	([e])
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Choromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000
78933	Methyl ethyl ketone (2-Butanone)	0.990
74884	Methyl iodide (Iodomethane)	1.000

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS—Continued

CAS No. [a]	Compound name	$F_{m\,305}$
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.994
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene [c]	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chlorform)	1.000
79005	1,1,2-Trichloroethane (Vinyltrichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.108
88062	2,4,6-Trichlorophenol	0.132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:
$F_{m\,305}$ Fraction measure factor in Method 305, 40 CFR 305 part 63, appendix A.
[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.
[b] Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.
[c] Denotes a HAP that may react violently with water.
[d] Denotes a HAP that hydrolyzes slowly in water.
[e] The $F_{m\,305}$ factors for some of the more common glycol 305 ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

25. Table 3 to Subpart GGGGG is amended by revising the entry for ''63.7(c)'' to read as follows:

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

* * * * * * *

Citation	Subject	Brief description	Applies to Subpart GGGGG
*	*	*	*
§ 63.7(c)	Quality Assurance/Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
*	*	*	*

* * * * * * *

[FR Doc. 06–4080 Filed 4–28–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27, 37, 38

[Docket No. OST–2006–23985]

RIN 2105–AD54

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Extension of comment period on proposed rule.

SUMMARY: The Department is extending through July 28, 2006, the period for interested persons to submit comments to its proposed rule concerning modifications to the Department's Americans with Disabilities Act and related rules.

DATES: Comments must be received by July 28, 2006. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [OST–2006–23985] by any of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov* (follow the instructions for submitting comments); (2) Web Site: *http://dms.dot.gov* (follow the instructions for submitting comments on the DOT electronic docket site); (3) Fax: 1–202–493–2251; (4) Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001; or (5) Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You should include the agency name and docket number [OST–2006–23985] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document. You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC 29590. Phone: 202–366–9310. TTY: 202–755–7687. Fax: 202–366–9313. E-mail: *bob.ashby@dot.gov* .

SUPPLEMENTARY INFORMATION: On February 27, 2006, the Department of Transportation (DOT or Department) issued a notice of proposed rulemaking (NPRM) that proposed to amend the Department's Americans with Disabilities Act (ADA) rule and related regulations (71 FR 9761). The proposed amendments concerned a variety of subjects, including rail station platform accessibility and ADA paratransit system requirements. The NPRM also sought comment on several upcoming issues of interest concerning surface transportation accessibility. The comment closing dates were April 28 for the proposed amendments to the ADA and related rules and May 28 for the other issues on which the Department sought comment.

On April 7, 2006, Amtrak, supported by the Association of American Railroads, requested an extension of the comment period through July 28, 2006, citing concerns about the effects of proposed amendments concerning rail station platform accessibility on its statutory obligation to make its stations accessible by 2010.

The Department agrees that an extension of the comment period would be useful to permit Amtrak additional time to assess its situation with respect to rail station accessibility, as it may be affected by the proposed rule. In addition, such an extension will give other parties additional time to consider the issues the NPRM raises and provide thoughtful comments to the Department. Accordingly, the Department finds that good cause exists to extend the comment period on the proposed rule from April 28, 2006, to July 28, 2006. This extension applies to all parts of the NPRM.

Issued in Washington, DC, this 24th day of April, 2006.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 06–4069 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 060406098–6098–01; I.D. 030706D]

RIN 0648–AT46

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

ACTION: Proposed rule; request for comments. Notice; availability of Environmental Assessment.

SUMMARY: NMFS has received a request from the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) for an authorization to take small numbers of marine mammals, by harassment, incidental to permitting professional fireworks displays within the Sanctuary in California waters. By this document, NMFS is proposing regulations to govern that take. In order to issue a Letter of Authorization (LOA) and issue final regulations governing the take, NMFS must determine that the taking will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.

DATES: Comments and information must be received no later than May 31, 2006.

ADDRESSES: Comments on the application and proposed rule may be submitted using the identifier 030706D, by any of the following methods:

E-mail: *PR1.030706D@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Hand-delivery or mailing of paper, disk, or CD-ROM comments should be addressed to: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

A copy of the application containing a list of references used in this document may be obtained by writing to the above address, by telephoning the contact listed under **FOR FURTHER**

INFORMATION CONTACT, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at the above address. To help NMFS process and review comments more efficiently, please use only one method to submit comments.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via the means stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: David Rostker, Washington, DC 20503, or by e-mail at *David_Rostker@omb.eop.gov*, or by fax at (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166, or Monica DeAngelis, NMFS, Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region. The Secretary will allow an incidental take if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking shall be prescribed.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Summary of Request

On May 10, 2002, NMFS received an application from the MBNMS requesting a 1–year Incidental Harassment Authorization (IHA) under section 101(a)(5)(D) and, subsequently, the issuance of regulations governing authorizations for a 5–year period under section 101(a)(5)(A) of the MMPA for the potential harassment of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to coastal fireworks displays conducted at MBNMS under permits issued by MBNMS to commercial companies. On July 4, 2005, NMFS issued an IHA to MBNMS (70 FR 39235, July 7, 2005) and that IHA expires on July 3, 2006.

The MBNMS adjoins 276 mi (444 km) or 25 percent of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 mi (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (such as Independence Day and municipal anniversaries), and to foster public use and enjoyment of the marine environment. The marine venue for this activity is the preferred setting for fireworks in central California in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be designated along urban shorelines and therefore has addressed many regulatory issues previously not encountered by the NMS program. ZZAuthorization of professional firework displays has required a steady refinement of policies and procedures toward this activity as more is learned about its impacts to the environment.

Specified Activities

Since 1993, the MBNMS, a component of NOAA, has processed requests for the professional display of fireworks that affect the Sanctuary. The MBNMS has determined that debris fallout (spent pyrotechnic materials) from fireworks events may constitute a discharge into the Sanctuary and thus a violate Sanctuary regulations, unless a ZZ authorization is issued by the Sanctuary. Therefore, sponsors of fireworks displays conducted in the MBNMS are required to obtain Sanctuary authorization prior to conducting such displays (see 15 CFR 922.132).

Professional pyrotechnic devices used in fireworks displays can be grouped into three general categories: aerial shells (paper and cardboard spheres or cylinders ranging from 2 in (5 cm) to 12 in (30 cm) in diameter and filled with incendiary materials), low-level comet and multi-shot devices similar to over-the-counter fireworks such as roman candles, and set piece displays that are mostly static in nature and are mounted on the ground.

Aerial shells are launched from tubes (called mortars), using black powder charges, to altitudes of 200 to 1000 ft (61 to 305 m) where they explode and ignite internal burst charges and incendiary chemicals. Most of the incendiary elements and shell casings burn up in the atmosphere; however, portions of the casings and some internal structural components and chemical residue fall back to the ground or water, depending on prevailing winds. An aerial shell casing is constructed of paper/cardboard or plastic and may include some plastic or paper internal components used to compartmentalize chemicals within the shell. Within the shell casing is a burst charge (usually black powder) and a recipe of various chemical pellets (stars) that emit prescribed colors when ignited. Some of the chemicals commonly used in the manufacturing of pyrotechnic devices are potassium chlorate, potassium perchlorate, potassium nitrate, sodium benzoate, sodium oxalate, ammonium, perchlorate, strontium nitrate, strontium carbonate, sulfur, charcoal, copper oxide, polyvinyl chloride, iron, titanium, shellac, dextrine, phenolic resin, and aluminum. Manufacturers consider the amount and composition of chemicals within a given shell to be proprietary information and only release aggregate descriptions of internal shell components. The arrangement and packing of stars and burst charges within the shell determine the type of effect produced upon detonation.

Attached to the bottom of an aerial shell is a lift charge of black powder. The lift charge and shell are placed at the bottom of a mortar that has been buried in earth/sand or affixed to a wooden rack. A fuse attached to the lift charge is ignited with an electric charge or heat source, the lift charge explodes,

and propels the shell through the mortar tube and into the air to a height determined by the amount of powder in the lift charge and the weight of the shell. As the shell travels skyward, a time-delay secondary fuse is burning that eventually ignites the burst charge within the shell at peak altitude. The burst charge detonates, igniting and scattering the stars, which may, in turn, possess small secondary explosions. Shells can be launched one at a time or in a barrage of simultaneous or quick succession launches. They are designed to detonate between 200 and 1000 ft (61 to 305) above ground level (AGL).

In addition to color shells (also known as designer or starburst shells), a typical fireworks show will usually include a number of aerial ''salute'' shells. The primary purpose of salute shells is to announce the beginning and end of the show and produce a loud percussive audible effect. These shells are typically two to three inches (five to seven centimeters) in diameter and packed with black powder to produce a punctuated explosive burst at high altitude. From a distance, these shells sound similar to cannon fire when detonated.

Low-level devices consist of stars packed linearly within a tube, and when ignited, the stars exit the tube in succession producing a fountain effect of single or multi-colored light as the stars incinerate through the course of their flight. Typically, the stars burn rather than explode, thus producing a ball or trail of sparkling light to a prescribed altitude where they simply extinguish. Sometimes they may terminate with a small explosion similar to a firecracker. Other low-level devices emit a projected hail of colored sparks or perform erratic low-level flight while emitting a high-pitched whistle. Some emit a pulsing light pattern or crackling or popping sound effects. In general, low-level launch devices and encasements remain on the ground or attached to a fixed structure and can be removed upon completion of the display. Common low-level devices are multi-shot devices, mines, comets, meteors, candles, strobe pots and gerbs. They are designed to produce effects between 0 and 200 ft (61 m) AGL.

Set piece or ground level fireworks are primarily static in nature and remain close to the ground. They are usually attached to a framework that may be crafted in the design of a logo or familiar shape, illuminated by pyrotechnic devices such as flares, sparklers and strobes. These fireworks typically employ bright flares and sparkling effects that may also emit limited sound effects such as cracking, popping, or whistling. Set pieces are usually used in concert with low-level effects or an aerial show and sometimes act as a centerpiece for the display. It may have some moving parts, but typically does not launch devices into the air. Set piece displays are designed to produce effects between 0 and 50 ft (15 m) AGL.

Each display is unique according to the type and number ofshells, the pace of the show, the length of the show, the acoustic qualities of the display site, and even the weather and time of day. The vast majority (97 percent) of fireworks displays ZZ authorized in the Sanctuary between 1993 and 2005 were aerial displays that usually included simultaneous low-level displays. An average large display will last 20 minutes and include 700 aerial shells and 750 low-level effects. An average smaller display lasts approximately seven minutes and includes 300 aerial shells and 550 low-level effects. There seems to be a declining trend in the total number of shells used in aerial displays, due to increasing shell costs and/or fixed entertainment budgets. Low-level displays sometimes compensate for the absence of an aerial show by squeezing a larger number of effects into a shorter timeframe. This results in a dramatic and rapid burst of light and sound effects at low level. A large low-level display may expend 4,900 effects within a 7–minute period, and a small display will use an average of 1,800 effects within the same timeframe. Some fireworks displays are synchronized with musical broadcasts over loudspeakers and may incorporate other non-pyrotechnic sound and visual effects.

The MBNMS has issued 67 permits for professional fireworks displays since 1993 (five in 2005) and 5 applications are currently being processed (as of March 2006). Four fireworks display applications have been directed to areas outside the Sanctuary. However, the MBNMS staff projects that as many as 20 coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. The number of displays will be limited to not more than 20 events per year in four specific areas along 276 mi (444 km) of coastline. Fireworks displays will not exceed 30 minutes (with the exception of up to two displays per year, not to exceed 1 hour) in duration and will occur with an average frequency of less than or equal to once every two months within each of the four prescribed display areas.

Initially, the MBNMS believed that it could minimize potential light, sound, and debris impacts to the Sanctuary and marine mammals through permit conditions to limit the location, timing, and composition of professional fireworks events affecting the MBNMS. However, due to observations over the past several years and through consultation with NMFS' Southwest Region, it appears that some fireworks displays resulted in incidental take of marine mammals by Level B harassment. NMFS believes that the nature of the take will be the short-term flushing and evacuation of non-breeding haulout sites by California sea lions and Pacific harbor seals.

A more detailed description of the fireworks displays permitted by MBNMS may be found in the application or in MBNMS' 2001 Assessment of Pyrotechnic Displays and Impacts Within the MBNMS, which are available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Description of Habitat and Marine Mammals Affected by the Activity

Habitat and Fireworks Display Areas

The Monterey Bay area is located in the Oregonian province subdivision of the Eastern Pacific Boreal Region. The six types of habitats found in the bay area are: (1) Submarine canyon habitat, (2) nearshore sublittoral habitat, (3) rocky intertidal habitat, (4) sandy beach intertidal habitat, (5) kelp forest habitat, and (6) estuarine/slough habitat. Monterey Bay supports a wide array of temperate cold-water species with occasional influxes of warm-water species, and this species diversity is directly related to the diversity of habitats.

Pyrotechnic displays within the Sanctuary are conducted from a variety of coastal launch sites - beaches, bluff tops, piers, offshore barges, and golf course sand traps and tee boxes. In the past, authorized displays have been confined to eight general locations in the Sanctuary. However, future permitted fireworks displays will be confined to only four general prescribed areas (with seven total sub-sites) within the Sanctuary, while displays along the remaining 95 percent of Sanctuary coastal waters will be prohibited. These sites were approved for fireworks events based on their proximity to urban areas and pre-existent high human use patterns, seasonal considerations such as the abundance and distribution of marine wildlife, and the acclimation of wildlife to human activities and elevated ambient noise levels in the area.

The four conditional display areas are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria

(Santa Rosa Creek)(see Map A in the application). The number of displays will be limited to not more than 20 total events per year within these four specific areas combined, along the whole 276 mi (444 km) of coastline.

1. Half Moon Bay

Site Description: This site has been used annually for a medium-sized Independence Day fireworks display on July 4, which lasts about 20 minutes. The launch site is on a sandy beach inside and adjacent to the east outer breakwater, upon which the aerial shells are launched and aimed to the southwest. The marine venue adjacent to Pillar Point Harbor is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

Human Use Patterns: The harbor immediately adjacent to the impact area is home to a major commercial fishing fleet that operates at all times of the day and night throughout the year. The harbor also supports a considerable volume of recreational boat traffic. Half Moon Bay Airport is located adjacent to the harbor, and approach and departure routes pass directly over the acute impact area. The airport is commonly used by general aviation pilots for training, with an annual average attendance of approximately 15 flights per day. On clear sunny weekends, the airport may accommodate as many as 50 flights in a single day. Beachgoers and water sport enthusiasts use the beaches to the south of the launch site. The impact area is also used by recreational fishermen, surfers, swimmers, boaters, and personal watercraft operators. To the north, around Pillar Point is an area known as ''Mavericks'', considered a world-class surfing destination. Periodically, surfing contests are held at Mavericks. The impact area is also subjected to daily traffic noise from California Highway 1, which runs along the coast and is the primary travel route through the area.

Marine Mammals at Fireworks Sites: A considerable concentration of harbor seals are present to the north around Pillar Point and on the coast to the south of the launch site. Sea otters are not concentrated in the impact area, though some individuals may be present. It is possible that individual elephant seals may enter the area from breeding sites at Ano Nuevo Island and the Farallon Islands, but breeding occurs in the winter and displays in Half Moon Bay are limited to summer. Gray whales typically migrate west of the reefs extending south from Pillar Point.

2. Santa Cruz/Soquel

Site Description: Three separate fireworks display sites (Santa Cruz, Capitolas, and Aptos) are located within the Santa Cruz/Soquel area. The Santa Cruz launch site has been used annually for City anniversary fireworks displays in early October. The launch site is on a sandy beach, adjacent to the Santa Cruz Boardwalk and the San Lorenzo River and along the west bank. The aerial shells are aimed to the south.

The Capitola launch site has been used only once since 1993 for a 50–year City anniversary fireworks display on May 23, 1999. This display was the largest volume fireworks display conducted in the MBNMS to date, incorporating 1700 aerial shells and 1800 low-level effects and lasting 25 minutes. The launch site was on the Capitola Municipal Pier, adjacent to the City of Capitola. The aerial shells were aimed above the pier.

The Aptos site has been used annually for a large fundraiser for Aptos area schools in October. The launch site is on the Aptos Pier and part of a grounded cement barge at Seacliff State Beach. The aerial shells are aimed above and to the south of the pier. The large aerial show lasts for approximately 20 minutes.

Human Use Patterns: The harbor immediately adjacent to the Santa Cruz impact area is home to a commercial fishing fleet that operates at all times of the day throughout the year. The harbor primarily supports a large volume of recreational boater traffic. The launch site is in the center of the shoreline of a major urban coastal city. The beaches to the west of the launch site are adjacent to a large coastal amusement park complex and are used extensively by beachgoers and water sport enthusiasts from the local area as well as San Jose and San Francisco. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users. Immediately southwest of the launch site is a mooring field and the Santa Cruz Municipal Pier which is lined with retail shops, restaurants, and offices. To the west of the pier is a popular local surfing destination known as ''Steamer Lane.'' Surfing contests are routinely held at the site. During the period from sunset through the duration of the fireworks display, 40–70 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters south of the launch site to take up position. In addition, U. S. Coast Guard and harbor patrol vessels motor through the impact area to maintain a safety zone around the launch site.

The Capitola impact area is immediately adjacent to a small urban community. The beaches to the east and west of the launch site are used daily by beachgoers and water sport enthusiasts from the regional area. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users. To the east of the Pier is a mooring field and popular public beach.

The Aptos impact area is immediately adjacent to a recreational beach. The beaches to the east and west of the launch site are used daily by beachgoers and water sport enthusiasts from the regional area. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users, but typically at moderate to light levels of activity. To the east and west of the Pier are public use beach areas and private homes at the top of steep coastal bluffs. During the period from sunset through the duration of the fireworks display, 30–40 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters seaward of the cement barge to take up position. In addition, U. S. Coast Guard and State Park Lifeguard vessels motor through the impact area to maintain a safety zone around the launch site.

Marine Mammals at the Fireworks Sites: California sea lions routinely use the Santa Cruz Municipal Pier as a haulout and resting site. Gray whales typically migrate along a southerly course, west of Point Santa Cruz and away from the pier. Sea otters are moderately concentrated in the impact areas near the Capitola Municipal Pier and Aptos Pier, primarily in and around the nearshore kelp forests. At the seaward end of the Aptos Pier is a 400–foot (122–meter) grounded cement barge. The barge was set in position as an extension of the pier, but has since been secured against public access. The exposed interior decks of the barge have created convenient haulout surfaces for harbor seals. In a 2000 survey, the MBNMS recorded as many as 45 harbor seals hauled out on the barge in the month of October.

3. Monterey Peninsula

Site Description: Two separate fireworks display sites (City of Monterey and Pacific Grove) are located within the Monterey Peninsula Area. Each Independence Day, the City of Monterey launches approximately 750 shells and an equal number of low-level effects from a barge anchored approximately

1000 ft (305 m) east of Municipal Wharf II and 1000 feet (305 meter) north of Del Monte Beach. The aerial shells are aimed above and to the northeast. The City's display lasts approximately 20 minutes and is accompanied by music broadcasted from speakers on Wharf II. The marine venue adjacent to Monterey Harbor is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers. Since 1999, a Monterey New Year's festival has used the City's launch barge for an annual fireworks display. The medium-size aerial display lasts approximately 8 minutes. In addition, three private displays (1993, 1998, and 2000) have been authorized from a launch site on Del Monte Beach. The 1993 display was an aerial display. Subsequent displays have been low-level displays, lasting approximately 7 minutes. Map D shows the location of and habitats found within the Monterey Fireworks Launch Sites.

The Pacific Grove site has been used annually for a ''Feast of Lanterns'' fireworks display in late July. The Feast of Lanterns is a community event that has been celebrated in the City of Pacific Grove for over 95 years. The fireworks launch site is at the top of a rocky coastal bluff adjacent to an urban recreation trail and public road. The aerial shells are aimed to the northeast. The small aerial display lasts approximately twenty minutes and is accompanied by music broadcasted from speakers at Lover's Cove. The fireworks are part of a traditional outdoor play that concludes the festival. The marine venue is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

Human Use Patterns: The Monterey fireworks impact area lies directly under the approach/departure flight path for Monterey Peninsula Airport (MRY) and is commonly exposed to noise and exhaust from general aviation, commercial, and military aircraft at approximately 500 ft (152 m) altitude. The airport supports approximately 280 landings/takeoffs per day in addition to touch-and-goes (landing and takeoff training). Commercial and recreational vessels operate in the area during day and night hours from the adjacent harbor. A 30–station mooring field lies within the acute impact area between the launch barge and Municipal Wharf II. The moorings are completely occupied during the annual fireworks event. Auto traffic and emergency vehicles are audible from Lighthouse and Del Monte Avenues, main transportation arteries along the adjacent shoreline. The impact area is utilized by thousands of people each week for boating, kayaking, scuba diving, fishing, swimming, and harbor operations. During the period from sunset through the duration of the fireworks display, 20–30 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters south of the launch site to take up position. In addition, U. S. Coast Guard and harbor patrol vessels motor through the impact area to maintain a safety zone around the launch site.

The Pacific Grove launch site is in the center of an urban shoreline, adjacent to a primary public beach in Pacific Grove. The shoreline to the east and west of the launch site is lined with residences and a public road and pedestrian trail. The impact area is used by boaters, recreational fishermen, swimmers, surfers, divers, beachgoers, tidepoolers, and others. The center of the impact area is in a cove with 30–40 ft (9–12 m) coastal bluffs. Immediately north of the launch site is a popular day use beach area. On a clear summer day, the beach may support up to 500 visitors at any given time. Surfing activity is common immediately north of the site. During the period from sunset through the duration of the fireworks display, 10–20 vessels anchor within the acute impact area to view the fireworks. A U. S. Coast Guard vessel motors through the impact area to maintain a safety zone seaward of the launch site.

Marine Mammals at the Fireworks Sites: The largest concentration of wildlife near the Monterey impact area are California sea lions and marine birds resting at the Monterey breakwater approximately 700 yards (640 meters) northwest of the center of the impact area. Several sea otters are present within Monterey Harbor and the acute impact area during the time of the fireworks display. Otters outside the harbor are most concentrated to the northwest of the Monterey breakwater; however, otters routinely forage and loiter within the acute impact area and along the shoreline to the north.

Sea otters and pups routinely forage and loiter within the Pacific Grove acute impact area in moderate numbers. Harbor seals routinely use offshore rocks and wash rocks for haulout and also forage in the area.

4. Cambria

Site Description: The site has been used annually for a small Independence Day fireworks display on July 4, which lasts approximately 20 minutes. The launch site is on a sandy beach at Shamel County Park, and the aerial shells are aimed to the west. Immediately north of the launch site is the mouth of Santa Rosa Creek and Lagoon. The marine venue is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

Human Use Patterns: The impact area is immediately adjacent to a county park and recreational beach. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and beachgoers. The shoreline south of the launch site is lined with hotels, abuts a residential neighborhood, and is part of San Simeon State Beach.

Marine Mammals at the Fireworks Site: The impact area includes low concentrations of harbor seals. Sea otters and sea lions are present in the impact area in moderate numbers. It is possible that individual elephant seals may enter the area from breeding sites to the north at Point Piedras Blancas, but breeding occurs in the winter and displays at Cambria are limited to the summer. Gray whales migrate along the coast in this area and may pass through the acute impact area, but July is not peak gray whale migration period.

Marine Mammals Potentially Affected by the Activity

Twenty-six species of marine mammals may be found in the Monterey Bay area (see Table 1 in the MBNMS application). Only six of these species, however, are likely to be present in the acute impact area (the area where sound, light, and debris effects have direct impacts on marine organisms and habitats) during a fireworks display. These species include the California sea lion, Pacific harbor seal, southern sea otter (*Enhydra lutris neries*) bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), and the California gray whale (*Eschrichtius robustus*). The northern elephant seal (*Mirounga angustirostris*) is rarely seen in the area.

Though the three abovementioned cetaceans (bottlenose dolphins, harbor porpoises, and California Gray whales) are known to frequent nearshore areas within the Sanctuary, they have never been reported in the vicinity of a

fireworks display, nor have there been any reports to the MBNMS of strandings or injured/dead animals discovered after any display. Since sound does not transmit well between air and water, these animals would likely not encounter the effects of fireworks except when surfacing for air. NMFS does not anticipate any take of cetaceans and they are not addressed further in this document.

Past Sanctuary observations have not detected any disturbance to sea otters as a result of the fireworks displays; however, past observations have not included specific surveys for this species. Sea otters do frequent all general display areas. Sea otters and other species may temporarily depart the area prior to the beginning of the fireworks display due to increased human activities. Some sea otters in Monterey harbor have become quite acclimated to very intense human activity, often continuing to feed undisturbed as boats pass simultaneously on either side and within 20 ft (6 m) of the otters. It is therefore possible that select individual otters may have a higher tolerance level than others to fireworks displays. Otters in residence within the Monterey harbor display a greater tolerance for intensive human activity than their counterparts in more remote locations. The MBNMS consulted with the U.S. Fish and Wildlife Service (USFWS) pursuant to section 7 of the Endangered Species Act (ESA) regarding effects on southern sea otters because the USFWS is the agency with jurisdiction over sea otters. The USFWS concluded in a biological opinion that take of sea otters is not likely.

The northern elephant seal is seen so infrequently in the areas with fireworks displays that they are not likely to be impacted by fireworks displays. Therefore, the only species likely to be harassed by the fireworks displays are the California sea lion and the Pacific harbor seal.

Additional information regarding these species can be found in Folkens' Guide to the Marine Mammals of the World (2002) and in the NMFS stock assessments on the NMFS website: *http://www.nmfs.noaa.gov/pr/PR2/Stock__Assessment__Program/individual__sars.html*. Information relevant to the distribution, abundance and behavior of the species that are most likely to be impacted by fireworks displays within the MBNMS, is provided below.

California Sea Lions

The population of California sea lions ranges from southern Mexico to southwestern Canada (Caretta *et al.*, 2004). In the United States, after pupping in late May to June, they breed during July, primarily in the Channel Islands of California. Most individuals of this species breed on the Channel Islands off southern California (100 mi (161 km) south of the MBNMS) and off Baja and mainland Mexico (Odell, 1981), although a few pups have been born on Ano Nuevo Island (Keith *et al.*, 1984). Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

Since nearing extinction in the early 1900's, the California sea lion population has increased and is now robust and growing at a current rate of 5.4 to 6.1 percent per year (based on pup counts) with an estimated ''minimum'' population (U.S. west coast) of 138,881 animals. The actual population level may be as high as 237,000 to 244,000 animals. The population is not listed as ''endangered'' or ''threatened'' under the ESA, nor is this species a ''depleted'' or a ''strategic stock'' under the MMPA.

In any season, California sea lions are the most abundant pinniped in the area (Bonnell *et al.*, 1983), primarily using the central California area to feed during the non-breeding season. After breeding farther south along the coast and migrating northward, populations peak in the Monterey Bay area in fall and winter and are at their lowest numbers in spring and early summer. A minimum of 12,000 California sea lions are probably present at any given time in the MBNMS region. Ano Nuevo Island is the largest single haul-out site in the Sanctuary, hosting as many as 9,000 California sea lions at times (Weise, 2000; Lowry, 2001).

Pacific Harbor Seals

Harbor seals are distributed throughout the west coast of the United States, inhabiting near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They generally do not migrate, but have been known to travel extensive distances to find food or suitable breeding areas (Caretta *et al.*, 2004). In California, approximately 400–500 harbor seal haulout sites are widely distributed along the mainland and on offshore islands (Caretta *et al.*, 2004).

The harbor seal population in California is healthy and growing at a current rate of 3.5 percent per year with an estimated ''minimum'' population (California) of 25,720 animals (Caretta *et al.*, 2004). The California population is estimated at 27,863 animals. The population is not listed as ''endangered'' or ''threatened'' under the ESA; nor is this species a ''depleted'' or a ''strategic stock'' under the MMPA.

Harbor seals are residents in the MBNMS throughout the year, occurring mainly near the coast. They haul out at dozens of sites along the coast from Point Sur to Ano Nuevo. Within MBNMS, tagged harbor seals have been documented to move substantial distances (10–20 km (3.9–7.8 mi)) to foraging areas each night (Oxman, 1995; Trumble, 1995). The species does breed in the Sanctuary, and pupping within the Sanctuary occurs primarily during March and April followed by a molt during May and June. Peak abundance on land within the Sanctuary is reached in late spring and early summer when they haul out to breed, give birth to pups, and molt (MBNMS FEIS, 1992).

Potential Effects of Activities on Marine Mammals

Acoustic and Light Effects

The primary causes of disturbance are sound effects and light flashes from exploding fireworks. Pyrotechnic devices that operate at higher altitudes are more likely to have a larger acute impact area (such as aerial shells), while ground and low-level devices have more confined effects. Acute impact area is defined as the area where sound, light, and debris effects have direct impacts on marine organisms and habitats. Direct impacts include, but are not limited to, immediate physical and physiological impacts such as abrupt changes in behavior, flight response, diving, evading, flushing, cessation of feeding, and physical impairment or mortality.

The largest commercial aerial shells used within the Sanctuary are 10–12 in (25–30 cm) in diameter and reach a maximum altitude of 1000 ft (305 m) AGL. The bursting radius of the largest shells is approximately 850 ft (259 m). The acute impact area can extend from 1 to 2 miles (1.6–3.2 km) from the center of the detonation point depending on the size of the shell, height of the explosions, type of explosions, wind direction, atmospheric conditions, and local topography.

Aerial shells produce flashes of light that can be brilliant (exceeding 30,000 candela) and can occur in rapid succession. Loud explosive and crackling sound effects stem primarily from salutes (described earlier) and bursting charges at altitude. People and

wildlife on the ground and on the surface of the water can feel the sound waves and the accompanying rapid shift of ambient atmospheric pressure. This pressure wave has been known to activate car alarms that detect vibration. Sounds attenuate farther from high altitude shells than low altitude shells since they are not as easily masked by buildings and landforms, allowing the sound envelope to ensonify more surface area on the ground and water. The sound from the lifting charge detonation is vectored upward through the mortar tube opening and reports as a dull thump to bystanders on the ground, far less conspicuous than the high-level aerial bursts. The intensity of an aerial show can be amplified by increasing the number of shells used, the pace of the barrage, and the length of the display.

Low-level devices reach a maximum altitude of 200 ft (61 m) AGL. The acute impact area can extend to 1 mi (1.6 km) from the center of the ignition point depending on the size and flight patterns of projectiles, maximum altitude of projectiles, the type of special effects, wind direction, atmospheric conditions, and local structures and topography. Low-level devices also produce brilliant flashes and fountains of light and sparks accompanied by small explosions, popping, and crackling sounds. Since they are lower in altitude than aerial shells, sound and light effects impact a smaller area. Low-level devices do not typically employ large black powder charges like aerial shells, but are often used in large numbers in concert with one another and in rapid succession, producing very intense localized effects.

Set pieces are stationary, do not launch any encased effects into the air, and produce effects between 0 and 50 ft (15 m) AGL. Small pellets of a pyrotechnic composition, such as those from sparklers or roman candles may be expelled a short distance into the air. Loud, but not explosive, noises, such as crackling, popping, or whistling may emanate from a set piece, though they are usually used in concert with low-level effects and aerial displays. Depending on the size and height of the structure, the number and type of effects, wind direction, and local topography, the acute impact area can extend up to 0.5 mile (0.8 km) from the center of the ignition point, though fallout is generally confined within a 300 ft (91 m) radius. Residue may include smoke, airborne particulates, fine solids, and slag.

The primary impact to wildlife noted in past observation reports by Sanctuary staff is the disturbance of marine mammals and seabirds from the light and sound effects of the exploding aerial shells. The loud sound bursts and pressure waves created by the exploding shells appear to cause more wildlife disturbance than the illumination effects. In particular, the percussive aerial salute shells have been observed to elicit a strong flight response in California sea lions and marine birds in the vicinity of the impact area (within 0.45 mi (0.72 km) of the launch site).

Physical Impairment

In 2001, the MBNMS and USFWS monitored the July 4 City of Monterey fireworks display with the most thorough effort to date. Monitors recorded species abundance before, during, and after the event and measured the decibel level of exploding fireworks. A hand-held decibel meter was located aboard a vessel adjacent to the Monterey Breakwater, approximately one half mile from the fireworks launch site. The highest sound pressure level (SPL) reading observed on the decibel meter during the fireworks display was 82 decibels. In the Vandenburg Airforce Base (VAFB) studies discussed below, not all harbor seals left a haul-out during a launch unless the Sound Exposure Level was 100 decibels or above (which, in the case of the VAFB launch locations and durations, is equivalent to an SPL of 89 to 95 decibels), and only short-term effects were detected. SEL is an energy metric that takes duration of the sound into account, and since the rocket sounds last more than one second, SEL is higher than SPL in this situation. The typical decibel levels for the display ranged from 70 to 78 decibels (SPL), and no salute effects were used in the display. An ambient noise level of 58 decibels was recorded at the survey site 30 minutes following the conclusion of the fireworks. MBNMS' proposed regulations for take of marine mammals include an acoustic monitoring requirement to measure sound levels at the breakwater, where sea lions typically haul out, during the 2006 City of Monterey fourth of July celebration, which will include aerial salutes.

Permanent (auditory) threshold shift (PTS) occurs when there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to fireworks can cause PTS in any marine mammals, physical damage to a mammal's ears can potentially occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Temporary (auditory) threshold shift (TTS) is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) note that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends.

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to fireworks. Based on current information, NMFS precautionarily sets impulsive sounds equal to or greater than 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment (injury) for pinnipeds, under water (NMFS, 2000). If measured by an inanimate receiver 190 dB re 1 microPa (rms) would equal an A-weighted sound intensity level of 128 dB re 20 microPa, which are the units used for airborne sound. However, environmental conditions and the ear of the receiving animal may alter how the sound is received in air versus water, and precise exposure thresholds for airborne sounds have not been determined.

Some factors that contribute to onset of PTS are as follows: (1) Exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs. Given the frequency, duration, and intensity of sounds (maximum measured 82 dB for larger aerial shells) that marine mammals may be exposed to, it is unlikely that they would sustain temporary, much less permanent, hearing impairment during fireworks displays.

In order to determine if harbor seals experience any change in their hearing sensitivity as a result of launch noise, researchers at VAFB conducted Auditory Brainstem Response (ABR)

testing on 10 harbor seals prior to, and after, the launches of 3 Titan IV rockets (one of the loudest launch vehicles at the south VAFB haul-out site). Detailed analysis of the changes in waveform latency and waveform replication of the ABR measurements showed that there were no detectable changes in the seals' hearing sensitivity as a result of the launch noise, which ranged from an A-weighted SPL of 111.4 to 111.2 dB and an A-weighted SEL from 96.6 to 103.6 (SRS Technologies, 2001).

Behavioral Disturbance

In some display locations, marine mammals and other wildlife may avoid or temporarily depart the impact area during the hours immediately prior to the beginning of the fireworks display due to increased human recreational activities associated with the overall celebration event (noise, boating, kayaking, fishing, diving, swimming, surfing, picnicking, beach combing, tidepooling, etc.), and as a fireworks presentation progresses, most marine mammals and birds generally evacuate the impact area. In particular, a flotilla of recreational and commercial boats usually gathers in a semi-circle within the impact area to view the fireworks display from the water. From sunset until the start of the display, security vessels of the U.S. Coast Guard and/or other government agencies often patrol throughout the waters of the impact area to keep vessels a safe distance from the launch site.

Non-nesting marine birds (especially pelicans, cormorants, and gulls) are among the first wildlife to evacuate the area at the start of fireworks displays. Past observations by the MBNMS indicate that virtually all birds within the acute impact area depart in a burst of flight within one minute of the start of a fireworks display, including low-level displays. However, staff have also repeatedly observed that Brandt's cormorants nesting at the Monterey Breakwater remain on their nests (over 200 nests) throughout the large July 4th aerial display that is launched each year from a barge approximately 0.5 mi (.8 km) away. Most non-nesting marine birds on the breakwater evacuate the area until the conclusion of the display. Their numbers return to normal levels by the following morning. During a 1998 display in Monterey, MBNMS staff observed a marine bird swim within 210 ft (64 m) of the launch site during the fireworks display. The bird remained on the water as the pyrotechnic effects were ignited aboard the barge and made no effort to swim away from the launch site. No injuries, fatalities, or negative impacts to marine birds have been detected during several years of monitoring and observations by the MBNMS.

Sea lions have been observed evacuating haul-out areas upon initial detonation of fireworks, and then returning to the haul-out sites within 4 to 15 hours following the end of the fireworks display. Harbor seals have been seen to remain in the water after initial fireworks detonation around the haul-out site. Sea lions in general are more tolerant of noise and visual disturbances than harbor seals - adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant to nearby human activities. For both pinniped species, pups and juveniles are more likely to be harassed when exposed to disturbance than older animals.

In general, marine wildlife depart or avoid surface waters and haul-out sites within a 1000–yard radius of the center of the impact area during fireworks displays. Even short, low-level displays can cause a flight response in wildlife within the acute impact area.

NMFS and MBNMS found no peer-reviewed literature that specifically investigates the response of California sea lions and harbor seals to commercial fireworks displays. Similarly, general harassment or injury thresholds for exposure to airborne sounds have not been set. However, extensive studies have been conducted at VAFB to determine responses by California pinnipeds to the effects of periodic rocket launches, the light and sound effects of which would be roughly similar to the effects of pyrotechnic displays, but of greater intensity. This ongoing scientific research program has been conducted since 1997 to determine the long-term cumulative impacts of space vehicle launches on the haul-out behavior, population dynamics and hearing acuity of harbor seals at VAFB. In addition, when sonic boom prediction models projected that a sonic boom would hit one of the northern Channel Islands, pinniped populations were studied at identified haul-out sites in order to determine the impact of the boom on pinniped behavior.

The response of harbor seals to rocket launch noise at VAFB depended on the intensity of the noise (dependent on the size of the vehicle and its proximity) and the age of the seal (SRS Technologies 2001). Not surprisingly, the highest noise levels are typically from launch vehicles with launch pads closest to the haul-out sites. The percentage of seals leaving the haul-out increases with noise level up to approximately 100 decibels (dB) A-weighted SEL, after which almost all seals leave, although recent data has shown that an increasing percentage of seals have remained on shore, and those that remain are adults. Given the high degree of site fidelity among harbor seals, it is likely that those seals that remained on the haul-out site during rocket launches had previously been exposed to launches; that is, it is possible that adult seals have become acclimated to the launch noise and react differently than the younger inexperienced seals. Of the 20 seals tagged at VAFB, 8 (40 percent) were exposed to at least 1 launch disturbance but continued to return to the same haul-out site. Three of those seals were exposed to 2 or more launch disturbances. Most of the seals exposed to launch noise (n=6, 75 percent) appeared to remain in the water adjacent to the haul-out site and then returned to shore within 2 to 22 minutes after the launch disturbance. Of the two remaining seals that left the haul-out after the launch disturbance, both had been on shore for at least 6 hours and returned to the haul-out site on the following day (SRS Technologies, 2001).

The launches at VAFB do not appear to have had long-term effects on the harbor seal population in this area. The total population of harbor seals at VAFB is estimated to be 1,040 animals and has been increasing at an annual rate of 12.6 percent. Since 1997, there have been five to seven space vehicle launches per year and there appears to be only short-term disturbance effects to harbor seals as a result of launch noise (SRS Technologies, 2001). Harbor seals will temporarily leave their haul-out when exposed to launch noise; however they generally return to the haul-out within one hour.

On San Miguel Island, when California sea lions and elephant seals were exposed to sonic booms from vehicles launched on VAFB, sea lion pups were observed to enter the water, but usually remained playing in the water for a considerable period of time. Some adults approached the water, while elephant seals showed little to no reaction. This short-term disturbance to sea lion pups does not appear to have caused any long-term effects to the population.

The conclusions of the five-year VAFB study are almost identical to the MBNMS observations of pinniped response to commercial fireworks displays. Observed impacts have been limited to short-term disturbance only.

Results of Past Monitoring of Pinnipeds During Fireworks at MBNMS

Past monitoring by the MBNMS has identified at most only a short-term

behavioral disturbance of animals by fireworks displays, with the primary causes of disturbance being sound effects and light flashes from exploding fireworks. Additionally, the VAFB study of the effects of rocket-launch noise, which is more intense than fireworks noise, on California sea lions and Pacific harbor seals indicated only short-term behavioral impacts. With the mitigation measures proposed below, any takes will be limited to the temporary incidental harassment of California sea lions and Pacific harbor seals due to evacuation of usual and accustomed haul-out sites for as little as 15 minutes and as much as 15 hours following any fireworks event. Most animals depart affected haul-out areas at the beginning of the display and return to previous levels of abundance within 4 to 15 hours following the event. This information is based on observations made by Sanctuary staff over an 8–year period (1993–2001) and a quantitative survey made in 2001. Empirical observations have focused on impacts to water quality and selected marine mammals and birds in the vicinity of the displays. No observations were made in upland areas (beyond the jurisdiction of the Sanctuary) due to limited staff resources.

Sea lions in general are more tolerant to noise and visual disturbances than harbor seals. In addition, pups and juveniles are more likely to be harassed when exposed to disturbance than the older animals. Adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant of human activities nearby. Of all the display sites in the Sanctuary, California sea lions are only present in significant concentrations at Monterey. The following is an excerpt from a 1998 MBNMS staff report on the reaction of sea lions to a large aerial fireworks display in Monterey:

In the first seconds of the display, the sea lion colony becomes very quiet, vocalizations cease, and younger sea lions and all marine birds evacuate the breakwater. The departing sea lions swim quickly toward the open sea. Most of the colony remains intact until the older bulls evacuate, usually after a salvo of overhead bursts in short succession. Once the bulls depart, the entire colony follows suit, swimming rapidly in large groups toward the open sea. A select few of the largest bulls may sometimes remain on the breakwater. Sea lions have been observed attempting to haul out onto the breakwater during the fireworks display, but most are frightened away by the continuing aerial bursts.

Sea lions begin returning to the breakwater within 30 minutes following the conclusion of the display but have been observed to remain quiet for some time. The colony usually reestablishes itself on the breakwater within 2–3 hours following the conclusion of the display, during which vocalization activity returns. Typically, the older bulls are the first to renew vocalization behavior (within the first hour), followed by the younger animals. By the next morning, the entire colony seems to be intact and functioning with no visible sign of abnormal behavior.

In the 2001 Monterey survey (discussed earlier), most animals were observed to evacuate haul-out areas upon the initial report from detonated fireworks. Surveys continued for 4.5 hours after the initial disturbance and numbers of returning California sea lions remained at less than 1 percent of pre-fireworks numbers. When surveys resumed the next morning (13 hours after the initial disturbance), sea lion numbers on the breakwater equaled or exceeded pre-fireworks levels. MBNMS staff have been opportunistically monitoring sea lions at the City of Monterey's Fouth of July celebration for more than 10 years. Following is a summary of their general observations: sea lions begin leaving the breakwater as soon as the fireworks begin, clear completely off after an aerial salute or quick succession of loud effects, usually begin returning within a few hours of the end of the display, and are present on the breakwater at pre-firework numbers by the following morning.

Up to 15 harbor seals may typically be present on rocks in the outer Monterey harbor in early July. The seal haulout area is approximately 2,100 ft (640 m)(horizontal distance) from the impact zone for the aerial pyrotechnic display. Only two harbor seals were observed on and near the rocks adjacent to Fisherman's Wharf prior to the 2001 display. Neither were observed to haul out after the initial fireworks detonation, but remained in the water around the haul-out. The haul-out site was only surveyed until the conclusion of the fireworks display, therefore, no animal return data is available. However, the behavior of the seals after the initial disturbance and during the fireworks display is similar to the response behavior of seals during the VAFB rocket launches, where they loitered in the water adjacent to their haul-out site during the launch and returned to shore within 2 to 22 minutes after the launch disturbance.

MBNMS staff monitored harbor seal reactions to a coastal fireworks display at Aptos in October 2000 and did not see any harbor seals during and immediately after the event. Based on the reaction of the birds and the noise of the display, observers believed that the seals evacuated the area on and around the cement ship. Harbor seals were sighted hauled out on the ship and in the water the following morning.

A private environmental consultant has monitored the Aptos fireworks display each October from 2001 through 2005 (per California Coastal Commission permit conditions) and concluded that harbor seal activity returns to normal at the site by the day following the display. Surveys have detected no evidence of injury or mortality in harbor seals as a result of the annual 30–minute fireworks display at the site.

Since harbor seals have a smaller profile than sea lions and are less vocal, their movements and behavior are often more difficult to observe at night. In general, harbor seals are more timid and easily disturbed than California sea lions. Thus, based on past observations of sea lion disturbance thresholds and behavior, it is very likely that harbor seals evacuate exposed haul outs in the acute impact area during fireworks displays, though they may loiter in adjacent surface waters until the fireworks have concluded.

Non-Acoustic Effects

Chemical Residue

Possible indirect impacts to marine mammals and other marine organisms include those resulting from chemical residue or physical debris emitted into the water. When an aerial shell detonates, its chemical components burn at high temperatures, which usually promotes efficient incineration. Pyrotechnic vendors have stated that the chemical components are incinerated upon successful detonation of the shell. However, by design, the chemical components within a shell are scattered by the burst charge, separating them from the casing and internal shell compartments.

Chemical residue is produced in the form of smoke, airborne particulates, fine solids, and slag (spent chemical waste material that drips from the deployment canister/launcher and cools to a solid form). The fallout area for chemical residue is unknown, but is probably similar to that for solid debris. Similar to aerial shells, the chemical components of low-level devices produce chemical residue that can migrate to ocean waters as a result of fallout. The point of entry would likely be within a small radius (about 300 ft (91 m)) of the launch site.

The MBNMS has found only one scientific study directed specifically at the potential impacts of chemical residue from fireworks upon the environment. A 1992 Florida study (DeBusk et al., 1992) indicates that

chemical residues (fireworks decomposition products) do result from fireworks displays and can be measured under certain circumstances. The report, prepared for the Walt Disney Corporation in 1992, presented the results of a 10–year study of the impacts of fireworks decomposition products (chemical residue) upon an aquatic environment. Researchers studied a small lake in Florida subjected to two thousand fireworks shows over a ten-year period to measure key chemical levels in the lake. The report concluded that detectable amounts of barium, strontium, and antimony had increased in the lake but not to levels considered harmful to aquatic biota. The report further suggested that ''environmental impacts from fireworks decomposition products typically will be negligible in locations that conduct fireworks displays infrequently'' and that ''the infrequence of fireworks displays at most locations, coupled with a wide dispersion of constituents, make detection of fireworks decomposition products difficult.'' The MBNMS staff spoke with one of the authors of the report who hypothesized that had the same study been conducted in California, the elevated metal concentrations in the lake would not have even been detectable against natural background concentrations of those same metals, due to naturally higher metal concentrations in the western United States. Based on the findings of this report and the lack of any evidence that fireworks displays within the Sanctuary have degraded water quality, the MBNMS believes that chemical residue from fireworks does not pose a significant risk to the marine environment. No negative impacts to water quality have been detected.

Debris

The fallout area for the aerial debris is determined by local wind conditions. In coastal regions with prevailing winds, the fallout area can often be projected in advance. This information is calculated by pyrotechnicians and fire department personnel in selection of the launch site to abate fire and public safety hazards. Mortar tubes are often angled to direct shells over a prescribed fallout area, away from spectators and property. Generally, the bulk of the debris will fall to the surface within a 0.5 mi (0.8 km) radius of the launch site. In addition, the tops of the mortars and other devices are usually covered with household aluminum foil to prevent premature ignition from sparks during the display and to protect them from moisture. The shells and stars easily punch through the thin aluminum foil when ignited, scattering pieces of aluminum in the vicinity of the launch site. Through various means, the aluminum debris and garbage generated during preparation of the display may be swept into ocean waters.

Some low-level devices may project small casings into the air (such as small cardboard tubes used to house flaming whistle and firecracker type devices). These casings will generally fall to earth within a 200-yard (183-meter) radius of the launch site, since they do not attain altitudes sufficient for significant lateral transport by winds. Though typically within 300 ft (91 m), the acute impact area for set piece devices can extend to a 0.5 mi (0.8 km) radius from the center of the ignition point depending on the size and height of the fixed structure, the number and type of special effects, wind direction, atmospheric conditions, and local structures and topography. Like aerial shells, low-level pyrotechnics and mortars are often covered with aluminum foil to protect them from weather and errant sparks, pieces of which are shredded during the course of the show and initially deposited near the launch site.

The explosion in a firework separates the cardboard and paper casing and compartments, scattering some of the shell's structural pieces clear of the blast and burning others. Some pieces are immediately incinerated, while others burn up or partially burn on their way to the ground. Many shell casings simply part into two halves or into quarters when the burst charge detonates and are projected clear of the explosion. However, during the course of a display, some devices will fail to detonate after launch (duds) and fall back to earth/sea as an intact sphere or cylinder. Aside from post display surveys and recovery, there is no way to account for these misfires. The freefalling projectile could pose a physical risk to any wildlife within the fallout area, but the general avoidance of the area by wildlife during the display and the low odds for such a strike probably present a negligible potential for harm. Whether such duds pose a threat to wildlife (such as curious sea otters) once adrift is unknown. After soaking in the sea for a period of time, the likelihood of detonation rapidly declines. Even curious otters are unlikely to attempt to consume such a device. At times, some shells explode in the mortar tube (referred to as a flower pot) or far below their designed detonation altitude. It is highly unlikely that mobile organisms would remain close enough to the launch site during a fireworks display to be within the effective danger zone for such an explosion.

The MBNMS has conducted surveys of solid debris on surface waters, beaches, and subtidal habitat and has discovered no visual evidence of acute or chronic impacts to the environment or wildlife. Aerial displays generally produce a larger volume of solid debris than low-level displays. The MBNMS fireworks permits (discussed later) require the permittee to clean area beaches of fireworks debris for up to 2 days following the display. In some cases, debris has been found in considerable quantity on beaches the morning following the display.

The MBNMS staff have recovered many substantial uncharred casing remnants on ocean waters immediately after marine displays. Other items found in the acute impact area are cardboard cylinders, disks, and shell case fragments; paper strips and wading; plastic wading, disks, and tubes; aluminum foil; cotton string; and even whole unexploded shells (duds or misfires). In other cases, virtually no fireworks debris was detected. This variance is likely due to several factors, such as type of display, tide state, sea state, and currents. In either case, due to the requirement for the permittee to clean up following the displays, NMFS does not believe the small amount of remaining debris is likely to significantly impact the environment, including marine mammals or their habitat.

Increased Boat Traffic

Increased boat traffic is often an indirect effect of fireworks displays as boaters move in to observe the event. The more boats there are in the area, the larger the chance that a boat could potentially collide with a marine mammal or other marine wildlife. The number of boats present at any one event is largely dependent upon weather, sea state, distance of the display from safe harbors, and season. At the MBNMS, some events have virtually no boat traffic, while others may have as many as 40 boats ranging in size from 10 to 65 ft (3 to 20 m) in length.

Prior to and during fireworks displays at the MBNMS, boats typically enter the observation area at slow speed (less than 8 kts (15 km/hr)) due to the other vessels present and limited visibility (i.e., most fireworks displays occur at night). The U.S. Coast Guard and/or other federal agency vessels are on site to enforce safe boating laws and keep vessels out of the debris fallout area during the display. Most boaters anchor prior to the display, while others drift

with engines in neutral for convenient repositioning.

MBNMS staff have observed boat traffic during several fireworks displays and generally found that boaters are using good boating and safety practices. They have also never witnessed the harassment, injury, or death of marine mammals or other wildlife as a result of vessels making way at these events. In general, as human activity increases and concentrates in the viewing areas leading up to the display, wildlife avoid or gradually evacuate the area. As noted before, the fireworks venues are marine areas with some of the highest ambient levels of human activity in the MBNMS. Many resident animals are accustomed to stimuli such as emergency sirens, vehicle noise, boating, kayaking, swimming, tidepooling, crowd noise, etc. Due to the gradual nature of the increase in boat traffic, it's infrequent occurrence and short duration, and the slow speed of the boats, NMFS does not believe the increased boat traffic is likely to significantly impact the human environment, including marine mammals.

Because of mitigation measures proposed, which are outlined below, NMFS preliminarily finds that only Level B harassment may occur incidental to authorized coastal fireworks displays and that these events will result in no more than a negligible impact on marine mammal species or their habitats. NMFS also preliminarily finds that no impact on the availability of the species or stocks for subsistence uses will occur because there is no subsistence harvest of marine mammals in California.

Mitigation

The MBNMS has worked with the USFWS and NMFS Southwest Region for over five years to craft a set of Sanctuary fireworks authorization guidelines (available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*) designed to minimize fireworks impacts on the marine environment, as well as outline the locations, frequency, and conditions under which the MBNMS will ZZ authorize marine fireworks displays.

The guidelines include five broad approaches for managing fireworks displays and will be implemented by the MBNMS:

(1) *Establish a sanctuary-wide seasonal prohibition to safeguard reproductive periods:* MBNMS has established a Sanctuary-wide seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of any year, since this period is the primary reproductive season for many marine species.

(2) *Establish four conditional display areas and prohibit displays along the remaining 95 percent of Sanctuary coastal areas:* Traditional display areas are located adjacent to urban centers where wildlife has often acclimated to human disturbances, such as low-flying aircraft, emergency vehicles, unleashed pets, beach combing, recreational and commercial fishing, surfing, swimming, boating, and personal watercraft operations. Remote areas and areas where professional fireworks have not traditionally been conducted will not be considered for fireworks approval. Future permitted fireworks displays will be confined to four prescribed areas of the Sanctuary while prohibiting displays along the remaining 95 percent of Sanctuary coastal areas. The conditional display areas (described earlier in detail) are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek).

(3) *Create a per-annum limit on the number of displays allowed in each display area:* If properly managed, a limited number of fireworks displays conducted in areas already heavily impacted by human activity can occur with sufficient safeguards to prevent any long-term or chronic impacts upon local natural resources. There is a per-annum limit of 20 displays along the entire Sanctuary coastline in order to prevent cumulative negative environmental effects from fireworks proliferation. Additionally, displays will be authorized at a frequency equal to or less than 1 every two months in each area and an equal number of private and public displays will be considered for authorization within each display area.

(4) *Retain permitting requirements and general and special restrictions for each event:* Fireworks displays will not exceed 30 minutes with the exception of two longer displays per year that will not exceed 1 hour. The Sanctuary will continue to assess displays on a case-by-case basis, using specially developed terms and conditions to address concerns unique to fireworks displays (e.g., restricting the number of aerial ''salute'' effects used as well as requiring a ''ramp-up'', wherein ''salutes'' are not allowed in the first 5 minutes of the display; requiring the removal of plastic and aluminum labels and wrappings; and requiring post-show reporting and cleanup). Such terms and conditions have evolved over 12 years, as the Sanctuary has sought to improve its understanding of the potential impacts that fireworks displays have upon marine wildlife and the environment. The MBNMS will implement general and special restrictions unique to each fireworks event as necessary.

(5) *Institute a 5-year permit system for annual displays:* The Sanctuary intends to institute a 5-year permit system for fireworks displays that occur annually at fixed locations in a consistent manner, such as municipal Independence Day shows.

The MBNMS fireworks guidelines are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the Sanctuary and minimize area of impact by confining displays to primary traditional use areas. They also effectively remove fireworks impacts from 95 percent of the Sanctuary's coastal areas, place an annual quota and multiple permit conditions on the displays authorized within the remaining 5 percent of the coast, and impose a sanctuary-wide seasonal prohibition on all fireworks displays. The guidelines were developed in order to assure that protected species and habitats are not jeopardized by fireworks activities. They have been well received by local fireworks sponsors who have pledged their cooperation in protecting Sanctuary resources. The MBNMS Fireworks Guidelines are available at the NMFS website at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Monitoring

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats for 12 years. In July 1993, the MBNMS performed its initial field observations of professional fireworks at the annual Independence Day fireworks display conducted by the City of Monterey. Subsequent ''documented'' field observations were conducted in Monterey by the MBNMS staff in July 1994, July 1995, July 1998, March 1998 (private display), October 2000 (private display), July 2001, and July 2002. Documented field observations have also been made at Aptos each October from 2000 to 2005. The MBNMS staff have observed additional displays at Monterey, Pacific Grove, Capitola, and Santa Cruz, but those observations were primarily for permit compliance purposes, and written assessments of environmental impacts were not generated. Though monitoring techniques and intensity have varied over the years and visual monitoring of wildlife abundance and behavioral responses to nighttime displays is challenging, observed impacts have

been consistent. Wildlife activity nearest to disturbance areas returns to normal (pre-display species distribution, abundance, and activity patterns) within 12–15 hours, and no signs of wildlife injury or mortality have ever been discovered as a result of managed fireworks displays.

Of all the past authorized fireworks display sites within the Sanctuary, the City of Monterey site has received the highest level of Sanctuary monitoring effort. The City of Monterey has hosted a marine fireworks display each July 4th since 1988 (5 years prior to designation of the MBNMS). The display is the longest running and largest annual commercial fireworks display within the Sanctuary. The Monterey breakwater (approximately one half statute mile from the pyrotechnic launch site) was constructed in the 1930s and, along with other natural rock formations, has been a regular haul-out site for California sea lions and harbor seals for many decades. For this reason, the Monterey site has been studied and surveyed by government and academic researchers for over 20 years. Consequently, the Monterey site has the best background data available for assessing status and trends of key marine mammal populations relative to annual fireworks displays. Therefore, the MBNMS proposes that Monterey be monitored as necessary to assess how local California sea lion and harbor seal distribution and abundance are affected by an annual fireworks display.

The Sanctuary proposes conducting a visual census of the Monterey breakwater and Harbor Rocks on July 4–5, either in 2006 or 2007, to update annual abundance, demographic response patterns, and departure and return rates for California sea lions and harbor seals relative to the July 4 fireworks display. Data will be collected by an observer aboard a kayak or small boat and from ground stations (where appropriate). The observer will use binoculars, counters, and data sheets to census animals. The pre and post fireworks census data will be analyzed to identify any significant temporal changes in abundance and distribution that might be attributed to impacts from the annual fireworks display. The data will also be added to past research statistics on the abundance and distribution of stocks at Monterey Harbor.

It should be noted, however, that annual population trends at any given pinniped haul-out site can be influenced by a myriad of environmental and biological factors, ranging from predation upon pups at distant breeding colonies to fluctuating prey stocks due to El Nino events. These many variables make it difficult to measure and differentiate the potential impact of a single stimulus on long-term population trends.

The Sanctuary also proposes to conduct one-time acoustic monitoring at the 2006 or 2007 City of Monterey Fourth of July fireworks display in conjunction with the behavioral monitoring described above. The procedures for this monitoring will be outlined and described in the preamble to the final rule, the regulations, and subsequent LOAs.

In addition to the comprehensive behavioral monitoring to be conducted at the Monterey Bay Breakwater in 2006, MBNMS will require its applicants to conduct a pre-event census of local marine mammal populations within the fireworks impact area. Each applicant will also be required to conduct post-event monitoring in the acute fireworks impact area to record injured or dead marine mammals brown pelicans, and other wildlife.

Reporting

MBNMS must submit a draft annual monitoring report to NMFS within 60 days after the conclusion of each calendar year. MBNMS must submit a final annual monitoring report to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final report. In addition, the MBNMS will continue to incorporate updated census data from government and academic surveys into its analysis and will make its information available to other marine mammal researchers upon request. Lastly, MBNMS must submit a draft comprehensive monitoring report to NMFS 120 days prior to the expiration of the regulations if renewal is requested, or 120 days after the expiration of the regulations, if renewal is not requested. MBNMS must submit the final comprehensive monitoring report to NMFS within 30 days after receiving comments from NMFS on the draft comprehensive monitoring report. Again, if no comments are received from NMFS, the draft report will be considered to be the final report.

Numbers of Marine Mammals Expected to be Harassed

As discussed above, the two marine mammal species NMFS believes likely to be taken by Level B harassment incidental to fireworks displays authorized within the Sanctuary are the California sea lion (*Zalophus californianus*) and the Pacific harbor seal (*Phoca vitulina richardsi*), due to the temporary evacuation of usual and accustomed haul-out sites. Both of these species are protected under the MMPA, and neither is listed under the ESA. Numbers of animals that may be taken by Level B harassment are expected to vary due to factors such as tidal state, seasonality, shifting prey stocks, climatic phenomenon (such as El Nino events), and the number, timing, and location of future displays. The estimated take of sea lions and harbor seals was determined by using a synthesis of information, including data gathered by MBNMS biologists at the specific display sites, results of independent surveys conducted in the MBNMS, and population estimates from surveys covering larger geographic areas. More detailed information regarding the estimates of take of sea lions and harbor seals may be found in the application at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Stage structure of California sea lions within the Sanctuary varies by location, but generally, the majority are adult and sub-adult males. Weise (2000) reported on the stage structure of California sea lions at two historic fireworks display areas within the MBNMS, and speculated that juveniles may haul out at the Monterey jetty in large numbers due to a need for a more protected haul-out location. He also reported that most animals on Ano Nuevo Island appeared to be adult males and suggested that the stage structure may vary between mainland haul-out sites and offshore islands and rocks. At all four designated display sites combined, twenty fireworks events per year could disturb an average total of 2,630 California sea lions, with the maximum being 6,170 animals out of a total estimated population of 237,000–244,000. These numbers are small relative to the population size (1.1–2.6%).

For harbor seals, an average of 302 and a maximum of 1,065 harbor out of a total estimated population of 27,836 could be disturbed within the Sanctuary as a result of twenty fireworks events per year at all four designated display sites combined. These numbers are small relative to the population size (1.1–3.8%). Nicholson (2000) studied the stage structure of harbor seals on the northeast Monterey Peninsula (an area with the largest single concentration of animals within the Sanctuary) for two years. For the final spring season of the study, survey numbers equate to a stage structure comprising 38 percent adult females, 15 percent adult males, 34 percent sub-adults, and 13 percent yearlings or juveniles.

With the incorporation of mitigation measures proposed later in this document, the MBNMS expects that only Level B incidental harassment may occur associated with the proposed permitted coastal fireworks displays, and that these events will result in no detectable impact on marine mammal species or stocks or on their habitats.

Possible Effects of Activities on Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. The amount of debris and chemical residue resulting from fireworks displays authorized within the MBNMS is determined by the size and contents of the different fireworks, as well as the wind conditions, weather, and other local variations. Implementation of the MBNMS Fireworks Guidelines, which require that permittees clean up the affected area after each fireworks display, will be required by the LOAs and Sanctuary Authorizations. No evidence of water quality deterioration has been found in relation to prior MBNMS fireworks displays and this document discusses the 1992 Walt Disney report, which found that environmental impacts from fireworks decomposition products typically will be negligible in locations that conduct fireworks displays infrequently. Because of the aforementioned mitigation measure and report, NMFS does not expect the debris and residue resulting from authorized fireworks displays to significantly impact marine mammals or marine mammal habitat in the MBNMS.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and thus, there are no anticipated effects on subsistence needs.

ESA

As mentioned earlier, the Steller sea lion and several species of federally listed cetaceans may be present at MBNMS at different times of the year and could potentially swim through the fireworks impact area during a display. In a 2001 consultation with MBNMS, the Southwest Region, NMFS, concluded that this action is not likely to adversely affect federally listed species under NMFS' jurisdiction. There is no designated critical habitat in the area. This action will not have effects beyond those analyzed in that consultation.

The USFWS is responsible for regulating the take of the southern sea otter, the brown pelican, and the western snowy plover. The MBNMS consulted with the USFWS pursuant to section 7 of the ESA regarding impacts to these species. The USFWS issued a biological opinion on June 22, 2005, which concluded that the authorization of fireworks displays, as proposed, is not likely to jeopardize the continued existence of endangered and threatened species within the Sanctuary or to destroy or adversely modify any listed critical habitat. The USFWS further found that MBNMS would be unlikely to take any southern sea otters, and therefore issued neither an incidental take statement under the ESA nor an IHA. The USFWS found that an incidental take of brown pelicans was possible and issued an incidental take statement containing terms and conditions to protect the species. The USFWS concluded that the authorization of fireworks events, as proposed, is not likely to jeopardize the continued existence of the western snowy plover or destroy or adversely modify critical habitat of the species.

National Environmental Policy Act

NOAA prepared a Final Environmental Impact Statement and Master Plan for the MBNMS in June 1992; however, this document did not address the authorization of fireworks on the Sanctuary. In 2006, MBNMS and NMFS jointly prepared a draft Environmental Assessment (EA) on the Issuance of Regulations Authorizing Incidental Take of Marine Mammals and Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays within the Monterey Bay National Marine Sanctuary. The draft EA will be made available for public comment concurrently with this proposed rule (see **ADDRESSES**).

Preliminary Determination

NMFS has preliminarily determined that the fireworks displays, as described in this document and in the application for regulations and subsequent LOAs, will result in no more than Level B harassment of small numbers of California sea lions and harbor seals. The effects of coastal fireworks displays will be limited to short term and localized changes in behavior, including temporarily vacating haulouts to avoid the sight and sound of commercial fireworks. NMFS has also preliminarily determined that any takes will have no more than a negligible impact on the affected species and stocks. No take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. Additionally, the MBNMS fireworks displays will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses for California sea lions or Pacific harbor seals in California waters.

Classification

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act

Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a proposed rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. section 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The MBNMS is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the MBNMS. The MBNMS is part of the National Oceanic and Atmospheric Administration, National Ocean Service, a Federal agency responsible for managing the national marine sanctuary program. Because this action, if adopted, would directly affect the MBNMS and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties,

Reporting and recordkeeping requirements, Seafood, transportation.

Dated: April 25, 2006.

James W. Balsiger,

Assistant Administrator for Regulatory Affairs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart J is added to part 216 to read as follows:

Subpart J—Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, California

Sec.

216.110 Specified activity and specified geographical region.
216.111 Effective dates.
216.112 Permissible methods of taking.
216.113 Prohibitions.
216.114 Mitigation.
216.115 Requirements for monitoring and reporting.
216.116 Applications for Letters of Authorization.
216.117 Letters of Authorization.
216.118 Renewal of Letters of Authorization.
216.119 Modifications to Letters of Authorization.

Subpart J—Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

§ 216.110 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the MBNMS and those persons it authorizes to display fireworks within the Monterey Bay National Marine Sanctuary.

(b) The incidental take, by Level B harassment only, of marine mammals under the activity identified in this section is limited to the following species: California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*).

§ 216.111 Effective dates.

Regulations in this subpart are effective from July 4, 2006, through July 3, 2011.

§ 216.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.117, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level B harassment only, within the area described in § 216.110(a), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The taking of marine mammals is authorized for the species listed in § 216.110(b) and is limited to the Level B Harassment of no more than 6,170 California sea lions and 1,065 harbor seals annually.

§ 216.113 Prohibitions.

Notwithstanding takings contemplated in § 216.110 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.117, no person in connection with the activities described in § 216.110 may:

(a) Take any marine mammal not specified in § 216.110(b);

(b) Take any marine mammal specified in § 216.110(b) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 216.110(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.117.

§ 216.114 Mitigation.

(a) The activity identified in § 216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.110(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.117 must be implemented. These mitigation measures include (but are not limited to):

(1) Limiting the location of the permitted fireworks displays to the four specifically designated areas at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Breakwater, and Cambria (Santa Rosa Creek);

(2) Limiting the frequency of permitted fireworks displays to no more than 20 total displays per year and no more than one fireworks display every two months in each of the four prescribed areas;

(3) Limiting the duration of permitted individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows not to exceed 1 hour;

(4) Prohibiting fireworks displays at MBNMS between March 1 and June 30 of any year; and

(5) Continuing to implement the 2006 MBNMS Fireworks Guidelines when permitting fireworks displays at the MBNMS, which include additional restrictions, such as the requirement for permittees to clean up debris following the event.

(b) The mitigation measures that the individuals conducting the fireworks are responsible for will be included as a requirement in the authorization the MBNMS issues to the individuals.

§ 216.115 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 216.117 for activities described in § 216.110(a) is required to cooperate with the National Marine Fisheries Service (NMFS), and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by telephone (301–713–2289), within 24 hours if the authorized activity identified in § 216.110(a) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 216.110(b).

(b) The Holder of the Letter of Authorization must conduct all monitoring and/or research required under the Letter of Authorization including, but not limited to:

(1) A one-time comprehensive pinniped census at the City of Monterey Fourth of July Celebration in 2006 or 2007,

(2) A one-time acoustic measurement of the Monterey Fourth of July Celebration,

(3) Counts of pinnipeds in the impact area prior to all displays, and

(4) Reporting to NMFS of all marine mammal injury or mortality encountered during debris cleanup the morning after each fireworks display.

(c) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the

conclusion of each calendar year. This report must contain;

(1) An estimate of the number of marine mammals disturbed by the authorized activities,

(2) Results of the monitoring required in § 216.115 (b), and (c) any additional information required by the Letter of Authorization. A final annual monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(d) A draft comprehensive monitoring report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of this subpart or 120 days after the expiration of this subpart if renewal of this subpart will not be requested. A final comprehensive monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.

§ 216.116 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.110(a) (MBNMS) must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.117 or a renewal under § 216.118.

§ 216.117 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.118.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

(d) The U.S. Citizen, i.e., the MBNMS, operating under an LOA must clearly describe in any permits issued to the individuals conducting fireworks displays, any requirements of the LOA that the individuals conducting fireworks are responsible for.

§ 216.118 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.117 for the activity identified in § 216.110(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.116 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.115(b), and the Letter of Authorization issued under § 216.117, which has been reviewed and accepted by NMFS; and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 216.114 and the Letter of Authorization issued under §§ 216.106 and 216.117, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.118 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 216.119 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.117 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.118, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.110(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.117 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E6–6504 Filed 4–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 042406G]

Notice of Public Hearings for Measures to End Bottomfish Overfishing in the Hawaii Archipelago

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

ACTION: Notice of public hearings.

SUMMARY: NMFS announces three public hearings on the Draft Supplemental Environmental Impact Statement, Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, Measures to End Bottomfish Overfishing in the Hawaii Archipelago (DSEIS). The DSEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality NEPA regulations, and NOAA Administrative Order Series 216–6 Environmental Review Procedures for Implementing the National Environmental Policy Act.

DATES: The public hearings will be held May 18, 22, and 25, 2005, respectively. For specific dates, times and locations of the public hearings, and the agenda see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The DSEIS is accessible electronically through the NMFS Pacific Islands Regional Office Web site at *http://swr.nmfs.noaa.gov/pir* or at the Western Pacific Fishery

Management Council (Council) website at *http://www/wpcouncil.org*. State of Hawaii public libraries were provided with copies of the DSEIS to be made available for inspection. Copies of the DSEIS may also be obtained from Keith Schultz, NEPA Specialist; 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814, 808–944–2276. Please specify when requesting if you would prefer a hard copy of the document, otherwise a CD may be provided. State of Hawaii public libraries were also provided with copies of the DSEIS.

Comments or questions submitted on the DSEIS must be received by May 30, 2006. Written comments should be submitted by mail to: William L. Robinson, Pacific Islands Regional Administrator, National Marine Fisheries Service, 1601 Kapiolani Blvd., Honolulu, HI 96814. Comments may be submitted by facsimile (fax) to 808–973–2941. Electronic comments may be submitted by e-mail to include in the comment subject line the following document identifier: Bottomfish Overfishing DSEIS, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*.. A copy of your comments should be submitted to Rodney F. Weiher, PhD., NEPA Coordinator, by mail to the NOAA Strategic Planning Office (PPI/SP), SSMC3, Room 15603, 1315 East-West Highway, Silver Spring, Maryland 20910; by fax to 301–713–0585; or by e-mail to *nepa.comments@noaa.gov*.

The public comment period began on April 14, 2006, with the publication of the Notice of Availability of the DSEIS in the **Federal Register** by the Environmental Protection Agency and will continue until May 30, 2006. Written and oral comments will be given equal weight, and NMFS will consider all comments received by May 30, 2006, in preparing the Final Supplemental Environmental Impact Statement. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: For general information on the NEPA process or to request a copy of the DSEIS, contact: Keith Schultz, NEPA Specialist, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

Background Information

On May 27, 2005, the Regional Administrator for the NMFS Pacific Islands Region notified the Council that overfishing of the bottomfish species complex is occurring within the Hawaiian Archipelago. In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council is preparing an amendment to the Bottomfish FMP to end overfishing in the bottomfish complex in the Hawaiian Archipelago. Bottomfish in the Hawaiian Archipelago are a collection, or complex, of deep-slope snappers, groupers, and jacks. The primary species addressed in the DSEIS are the ''Deep 7'' bottomfish species. The Deep 7 bottomfish species are: onaga (*Etelis corsucans*), ehu (*Eetelis carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*Pristipomoides sieboldii*), hapuupuu (*Epinephelus quernus*), opakapaka (*Pristipomoides filamentosus*), and lehi (*Aphareus rutilans*). The DSEIS examines Hawaii's bottomfish fisheries, describes the alternatives being considered to end the overfishing, and identifies the impacts associated with each alternative.

Proposed Federal Action

The proposed Federal action in the DSEIS is the approval of an amendment to end overfishing of Hawaii's archipelagic bottomfish multi-species stock complex by the Secretary of Commerce and the implementation and enforcement of the amendment's regulatory measures by NMFS. The proposed Federal action in the DSEIS would be the implementation of a seasonal closure between May 1 and August 31 prohibiting the targeting, possession, landing, or selling of any of Hawaii's Deep 7 bottomfish species. However, if the State of Hawaii does not commit to promulgate seasonal closure regulations, the proposed Federal action would be the implementation of a closure of Middle and Penguin Banks to the targeting, possession, landing, or selling of any of Hawaii's Deep 7 bottomfish species from Middle and Penguin Banks.

Guideline Hearing Agenda

All attendees wishing to comment during the public hearing must register during the registration period for the hearing.

Availability of the DSEIS

The following format will be used as a guideline for conducting the hearing.

1. Open the Hearing
2. Introductions and Hearing Procedures
3. Presentation of the Proposed Action and the Alternatives
4. Opportunity for Public to Ask Questions to Clarify Points Made in the Presentation
5. Public Comment
6. Close the Hearing

Dates, Times and Locations of Public Hearings

(1) Maui, HI—Thursday, May 18, 2006, from 7–9 p.m., at the Maui Beach Hotel, 170 Maahumanu Ave., Maui, island of Maui Beach Hotel, 170 Kaahumanu Avenue, Kahului, HI 96732;

(2) Kauai, HI—Monday, May 22, 2006, from 7–9 p.m., at the Chiefess Kamakahelei Middle School, 4431 Nuhou St, Lihue, HI 96766; and

(3) Honolulu, HI—Thursday, May 25, 2006, from 7–9 p.m. at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Oahu.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Keith Schultz, 808–944–2276, at least five (5) business days prior to the meeting date.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 25, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–6502 Filed 4–28–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 83
Monday, May 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

Submission for OMB Review; Comment Request

April 25, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: Form RD 410–8, Application Reference Letter (A Request for Credit Reference).

OMB Control Number: 0575–0091.

Summary of Collection: Form RD 410–8, *Applicant Reference Letter,* provides credit information and is used by Rural Housing Service (RHS) to obtain information about an applicant's credit history that might not appear on a credit report. It can be used to document an ability to handle credit effectively for applicants who have not used sources of credit that appear on a credit report. The form provides RHS with relevant information about the applicant's creditworthiness and is used to make better creditworthiness decisions.

Need and Use of the Information: RHS will collect information to supplement or verify other debts when a credit report is limited and unavailable to determine the applicant's eligibility and creditworthiness for RHS loans and grants.

Description of Respondents: Business or other for-profit.

Number of Respondents: 13,466.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,346.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–6477 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 25, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: CRP Hunting Viewing Revenues Survey.

OMB Control Number: 0560–NEW.

Summary of Collection: The Farm Service Agency (FSA) on behalf of the Commodity Credit Corporation provides services to landowners under the Conservation Reserve Program (CRP), to help them conserve and improve soil, water and wildlife resources on their lands. Some landowners have used their lands enrolled in the CRP, to provide recreational activities (hunting, fishing, hiking, viewing and other activities) to outdoor recreationists. FSA will conduct the CRP Hunting and Wildlife Viewing Revenue Survey to determine how many landowners are providing any recreational activities on their lands and how it affects the CRP program plus the revenues generated by their activities.

Need and Use of the Information: FSA will collect information to find out how CRP participants are providing recreational activities on their lands, how such activities affects the CRP

program and what revenues are generated by such activities. The collected information will also be used to estimate the value of enhanced wildlife populations on CRP lands to CRP landowners and to evaluate the benefits of the CRP programs.

Description of Respondents: Farms; business or other-for-profit.

Number of Respondents: 4,000.

Frequency of Responses: Reporting; Other (one-time survey).

Total Burden Hours: 333.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–6483 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–309]

United States Standards for Grades of Persian (Tahiti) Limes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the voluntary United States Standards for Grades of Persian (Tahiti) Limes. Specifically, the juice content requirement shall be revised to allow juice content to be determined by weight. Additionally, the redesignation of limes to ''Mixed Color'' and ''Turning'' within the color requirements will be made optional. The standards provide industry with a common language and uniform basis for trading, thus promoting the orderly and efficient marketing of Persian limes.

DATES: *Effective Date:* May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, (202) 720–2185, fax (202) 720–8871, or E-mail *Cheri.Emery@usda.gov.* The United States Standards for Grades of Persian (Tahiti) Limes is available either from the above address or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the voluntary United States Standards for Grades of Persian (Tahiti) Limes using the procedures that appear in part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

Prior to undertaking research and other work associated with a proposed revision of the standards, AMS published a notice on June 25, 2004, in the **Federal Register** (69 FR 35572) requesting comments on the possible revision of the United States Standards for Grades of Persian (Tahiti) Limes. Based on the comments received, AMS published a notice in the **Federal Register** (70 FR 12174) on March 11, 2005, proposing to revise the juice and color requirements. AMS published a subsequent notice in **Federal Register** (70 FR 36111), on June 22, 2005, extending the period for comments.

In response to the requests for comments, AMS received sixteen responses to the proposed revisions. Thirteen of the responses were from a produce association, with twelve separate comments from association members supporting the association response. One comment was from a national trade association representing produce receivers, one from a foreign trade organization and one from a foreign government agency. The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

AMS proposed removing the juice requirement. Juice content is based on volume and is complex to determine. The comment from the produce association's President, supported by the twelve separate association members, was in favor of the removal. Another comment stated they believe that the requirement was difficult to apply, however, if the requirement remains in the standard they suggested the minimum juice content be reduced to 30 percent from the current requirement of 42 percent. AMS does not support the commenter's proposed reduction, as the 42 percent juice content would be considered by most of the industry to have an acceptable amount of juice. Another commenter suggested that the juice content be determined by weight rather than volume. Given the comments received, AMS has decided to retain the juice requirement in the standards at the current requirement of 42 percent and the volume method. AMS believes that the comment suggesting that the juice content be determined by weight has merit. This method is less complex than the volume method. Further, this method is currently used within the industry. Accordingly, an option to determine the juice content by weight will be added to the standard.

AMS proposed removing the color requirements. The color requirements specify that limes have a percentage of the surface with good green color. The U.S. No. 1 grade, requires three-fourths of the surface to be good green color and the U.S. No. 2 grade requires one-half of the surface good green color. The standard further states, limes not meeting the requirements of the grade due to blanching shall be redesignated as ''Mixed Color'' and limes that do not meet the requirements of the grade due to turning yellow or yellow color, caused by the ripening process shall be designated as ''Turning.'' One commenter supported eliminating the redesignation of lots as ''Mixed Color'' and ''Turning'' for the U.S. No. 1 grade only. Another commenter supported the elimination of the ''Turning'' designation for all grades. The comment from the produce association's President, supported by the twelve separate association members, supported leaving the redesignation of lots to ''Turning'' for advanced yellowing. This commenter further suggested designating lots of limes with blanching and ''incipient'' yellowing as ''Mixed Color.'' Additionally, this commenter also suggested creating a new grade, U.S. Fancy, which would require limes to be predominately good green. The commenter also recommended revising the U.S. No. 1 grade to allow the fruit to have 50 percent of the surface to show ''lightened color'' as a result of blanching and an additional 10 percent of the surface to show ''lightened color'' as a result of yellowing. Since these suggested changes significantly deviate from the two proposed changes, and

they will not be addressed in this revision. Based on the comments received, AMS believes a revision to the color requirement, rather than removal, would better meet the needs of the industry, because this requirement still reflects industry practice. Therefore, the requirement regarding limes having a percentage of the surface with good green color will remain unchanged. However, in view of the comments received, the required redesignation to ''Mixed Color'' and ''Turning'' is revised to an optional redesignation in order to provide the industry with flexibility regarding these designations. Otherwise, limes that do not make grade based on color will be designated as a ''fails to grade.''

Two comments were received regarding size. Additionally, two comments were received suggesting the elimination of the U.S. Combination grade. These matters are beyond the scope of the proposed revision. Therefore, these changes are not addressed in this action.

Based on the comments received and information gathered, AMS believes the revision to the standards will improve their usefulness in serving the industry. The official grade of a lot of Persian (Tahiti) Limes covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Persian (Tahiti) Limes will be effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: April 26, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–6482 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of Meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, May 26, 2006. The meeting is scheduled to begin at 11 a.m. and will conclude at approximately 4 p.m. The meeting will be held at Lane County Forest Work Camp; Alma, Oregon; (541) 935–0144. The tentative agenda includes: (1) Election of chairperson; (2) Tour of the Work Camp; (3) Report on National Forest Counties and Schools Coalition Conference; (4) Decision on overhead rate for 2007 projects; (5) Presentation of 2007 Projects; and (6) Public Forum.

The Public Forum is tentatively scheduled to begin at 2 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May 26th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: April 21, 2006.

Dallas J. Emich,

Forest Supervisor.

[FR Doc. 06–4058 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Minnesota's Central Filing System

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: In response to a request from Minnesota's Secretary of State we are approving the amendments to the signature and property description requirements of the certified central filing system for Minnesota and the addition of two farm products to Minnesota's certified central filing system for notification of liens on farm products.

DATES: *Effective Date:* April 25, 2006.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the Clear Title program for the Secretary of Agriculture. The Clear Title program is authorized by Section 1324 of the Food Security Act of 1985 and requires that States implementing central filing system for notification of liens on farm products must have such systems certified by the Secretary of Agriculture.

A listing of the states with certified central filing systems is available through the Internet on the GIPSA Web site (*http://www.gipsa.usda.gov*). Farm products covered by a State's central filing system are also identified through the GIPSA Web site. The Minnesota central filing system covers specified products.

We originally certified the central filing system for Minnesota on July 7, 1993. On September 5, 2005, Mary Kiffmyer, Minnesota Secretary of State, requested the certification be amended to make changes related to on-line searching and central filing system procedures necessitated or made possible by amendments to Section 1324 of the Food Security Act, which, among other things, permit effective financing statements to be signed, authorized, or otherwise authenticated. Specifically, the following changes were requested:

(1) Provide for alternative filing of effective financing statements, continuations, and terminations that are signed, authorized, or otherwise authenticated, by internet and

(2) Provide for online searching of master lists by farm product; and within each farm product, alphabetically by debtor name; numerically by debtor identification number; by county; and by crop year.

In addition, she requested the certification be amended to add the following two farm products produced in Minnesota: Wild Rice, Bison.

This notice announces our approval of the amended certification for Minnesota's central filing system in accordance with the request to amend signature and filing requirements, add online searching, and add additional farm products.

Effective Date

This notice is effective upon signature for good cause because it allows Minnesota to provide information about additional farm products through its central filing system. In addition, it increases the flexibility in which effective filing statements may be authorized and authenticated, and it allows various methods to search online for information about farm products. Approving additional farm products for approved central filing systems and changes to the certification of approved central filing systems do not require public notice. Therefore, this notice may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 1631, 7 CFR 2.22(a)(3)(v) and 2.81(a)(5), and 9 CFR 205.101(e).

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–6464 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee (''the Committee'').

DATES: June 13, 7:30 a.m. to 5 p.m.; and June 14, 2006, 7:30 a.m. to 1 p.m.

ADDRESS: The Advisory Committee meeting will take place at the Embassy Suites Hotel, Kansas City Plaza, 220 West 43rd Street, Kansas City, Mo.

Requests to address the Committee at the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be Faxed to (202) 690–2755.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Henry, (202) 205–8281 (telephone); (202) 690–2755 (facsimile).

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include an update on the agency's finances, marketing activities, progress report on reengineering of domestic operations, use of third party contracting, hard white wheat rule implementation, and methods development activities.

For a copy of the agenda please contact Terri Henry, (202) 205–8281 (telephone); (202) 690–2755 (facsimile) or by e-mail *Terri.L.Henry@usda.gov*.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–6463 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5818, South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 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 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: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–0784.

Title: Distance Learning and Telemedicine Loan and Grant Program.

OMB Control Number: 0572–0096.

Type of Request: Extension of a currently approved information collection package.

Abstract: The Rural Utilities Service's (RUS) Distance Learning and Telemedicine (DLT) Loan and Grant program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services. The various forms and narrative statements required are collected from the applicants (rural community facilities, such as schools, libraries, hospitals, and medical facilities, for example). The purpose of collecting the information is to determine such factors as eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and, compliance with applicable laws and regulations. In addition, for grants funded pursuant to the competitive evaluation process, information collected facilitates RUS' selection of those applications most consistent with DLT goals and objectives in accordance with the authorizing legislation and implementing regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.47 hours per response.

Respondents: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 22.00.

Estimated Total Annual Burden on Respondents: 16,316 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 690–1078, FAX: (202) 720–7853.

All responses to this notice will be summarized and include in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 25, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. 06–4071 Filed 4–28–06; 8:45am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202)720–0784. Fax: (202)720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that USDA Rural Development is submitting to OMB for extension.

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 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 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: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202)720–8435.

Title: 7 CFR Part 1717, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Type of Request: Extension of a currently approved information collection package.

Abstract: USDA Rural Development, through the Rural Utilities Service, makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). This information collection requirement stems from passage of Public Law 104–127, on April 4, 1996, which amended section 331(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to extend to USDA Rural Development the Secretary of Agriculture's authority to settle debts with respect to loans made or guaranteed by USDA Rural Development. Only those electric borrowers that are unable to fully repay their debts to the Government and who apply to USDA Rural Development for relief will be affected by this information collection.

The collection will require only that information which is essential for determining: the need for debt settlement; the amount of relief that is needed; the amount of debt that can be repaid; the scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered. The information to be collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed. Since the need for relief is expected to vary substantially from case to case, so will the required information collection.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3,000 hours per response.

Respondents: Not-for-profit institutions and other businesses.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,000 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis at (202)720–0812. FAX: (202)720–8435.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Dated: April 24, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–6521 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5818—South Building, Washington, DC 20250–1522. Telephone: (202)720–0784. FAX: (202)720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that USDA Rural Development is submitting to OMB for extension.

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 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 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: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522. FAX: (202)720–8435.

Title: 7 CFR Part 1786—Prepayment of Guaranteed and Insured FFB Loans

OMB Control Number: 0572–0088.

Type of Request: Extension of a currently approved information collection.

Abstract: 7 CFR Part 1786 establishes policies and procedures mandated by legislation. This part deals with the prepayment of certain loans held by the Federal Financing Bank (FFB), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by USDA Rural Development.

This regulation sets forth policy and procedures implementing section 306(A) of the RE Act which permits an USDA Rural Development Utilities Programs financed electric or telephone system to prepay an FFB loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.21 hours per response.

Respondents: Not-for-profits organizations; business or, other for-profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11.05 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Dated: April 24, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–6525 Filed 4–28–06; 8:45 am]

BILLING CODE 3410–15–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, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

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 section 351.213 (2002) 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 May 2006[1], interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

Antidumping Duty Proceeding	Period
ARGENTINA: Light–walled Rectangular Carbon Steel Pipe and Tubing	
A–357–802	5/1/05 - 4/30/06
BELGIUM: Stainless Steel Plate in Coils	
A–423–808	5/1/05 - 4/30/06
BRAZIL: Iron Construction Castings	
A–351–503	5/1/05 - 4/30/06
CANADA: Softwood Lumber	
A–122–838	5/1/05 - 4/30/06
CANADA: Stainless Steel Plate in Coils	
A–122–830	5/1/05 - 4/30/06
FRANCE: Antifriction Bearings, Ball and Spherical Plain	
A–427–801	5/1/05 - 4/30/06
GERMANY: Antifriction Bearings, Ball	
A–428–801	5/1/05 - 4/30/06
INDIA: Silicomanganese	
A–533–823	5/1/05 - 4/30/06
INDIA: Welded Carbon Steel Pipes and Tubes	
A–533–502	5/1/05 - 4/30/06
ITALY: Antifriction Bearings, Ball	
A–475–801	5/1/05 - 4/30/06
ITALY: Stainless Steel Plate in Coils	
A–475–822	5/1/05 - 4/30/06
JAPAN: Antifriction Bearings, Ball	

[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 Proceeding	Period
A–588–804	5/1/05 - 4/30/06
JAPAN: Gray Portland Cement and Clinker	
A–588–815	5/1/05 - 4/30/06
JAPAN: Stainless Steel Angle	
A–588–856	5/1/06 - 4/30/06
KAZAKHSTAN: Silicomanganese	
A–834–807	5/1/06 - 4/30/06
REPUBLIC OF KOREA: Polyester Staple Fiber	
A–580–812	5/1/06 - 4/30/06
REPUBLIC OF KOREA: Stainless Steel Angle	
A–580–846	5/1/06 - 4/30/06
REPUBLIC OF KOREA: Stainless Steel Plate in Coils	
A–580–831	5/1/06 - 4/30/06
SINGAPORE: Antifriction Bearings, Ball	
A–559–801	5/1/06 - 4/30/06
SPAIN: Stainless Steel Angle	
A–469–810	5/1/05 - 4/30/06
SOUTH AFRICA: Stainless Steel Plate in Coils	
A–791–805	5/1/06 - 4/30/06
TAIWAN: Certain Circular Welded Carbon Steel Pipe & Tubes	
A–583–008	5/1/05 - 4/30/06
TAIWAN: Polyester Staple Fiber	
A–583–833	5/1/05 - 4/30/06
TAIWAN: Stainless Steel Plate in Coils	
A–583–830	5/1/05 - 4/30/06
THE PEOPLE'S REPUBLIC OF CHINA: Iron Construction Castings	
A–570–502	5/1/05 - 4/30/06
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium	
A–570–832	5/1/05 - 4/30/06
THE UNITED KINGDOM: Antifriction Bearings, Ball	
A–412–801	5/1/05 - 4/30/06
TURKEY: Welded Carbon Steel Pipe and Tube	
A–489–501	5/1/05 - 4/30/06
VENEZUELA: Silicomanganese	
A–307–820	5/1/05 - 4/30/06

Countervailing Duty Proceedings	Period
BELGIUM: Stainless Steel Plate in Coils	
C–423–809	1/1/05 - 12/31/05
BRAZIL: Iron Construction Castings	
C–351–504	1/1/05 - 12/31/05
CANADA: Softwood Lumber	
C–122–839	1/1/05 - 12/31/05
SOUTH AFRICA: Stainless Steel Plate in Coils	
C–791–806	1/1/05 - 12/31/05

Suspension Agreements	
None.	

In accordance with section 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*, 68 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*.

[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.

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, N.W., Washington, D.C. 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 Commerce Building. Further, in accordance with section 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 May 2006. If the Department does not receive, by the last day of May 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 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 warehouse, 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: April 20, 2006.

Thomas F. Futtner,

Acting Office Director AD/CVD Operations, Office 4 Import Administration.

[FR Doc. 06–4096 Filed 4–28–06; 8:45 am]

BILLING CODE 3510–DS–S

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 June 2006

The following Sunset Reviews are scheduled for initiation in June 2006 and will appear in that month's Notice of Initiation of Five–Year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Oil Country Tubular Goods from Argentina (A–357–810) (2nd Review)	Dana Mermelstein (202) 482–1390
Oil Country Tubular Goods from Italy (A–475–816) (2nd Review)	Dana Mermelstein (202) 482–1390
Oil Country Tubular Goods from Japan (A–588–835) (2nd Review)	Dana Mermelstein (202) 482–1390
Oil Country Tubular Goods from Mexico (A–201–817) (2nd Review)	Dana Mermelstein (202) 482–1390
Oil Country Tubular Goods from South Korea (A–580–820) (2nd Review)	Dana Mermelstein (202) 482–1390
Seamless Line and Pressure Pipe from Argentina (A–357–809) (2nd Review)	Dana Mermelstein (202) 482–1390
Seamless Line and Pressure Pipe from Brazil (A–351–826) (2nd Review)	Dana Mermelstein (202) 482–1390
Seamless Line and Pressure Pipe from Germany (A–428–820) (2nd Review)	Dana Mermelstein (202) 482–1390
Countervailing Duty Proceedings.	
Oil Country Tubular Goods from Italy (C–475–817) (2nd Review)	Dana Mermelstein (202) 482–1390
Suspended Investigations.	
No suspended investigations are scheduled for initiation in June 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.

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.

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: April 12 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. 06–4097 Filed 4–28–06; 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 a five–year (''Sunset Review'') of the antidumping duty order 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 order.

EFFECTIVE DATE: May 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 Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–821–807	731–TA–702	Russia	Ferrovanadium & Nitrided Vanadium (2nd Review)	Brandon Farlander (202) 482–0182

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: April 25, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, for Import Administration.

[FR Doc. 06–4098 Filed 4–28–06; 8:45 am]

BILLING CODE 3510–DS–S

[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.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042406F]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2006 Georges Bank Cod Hook Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch

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

ACTION: Notice.

SUMMARY: NMFS announces partial approval of an Operations Plan and Sector Contract titled ≥Amendment 2 to Georges Bank Cod Hook Sector (Sector) Operations Plan and Agreement≥ (together referred to as the Sector Agreement), and the associated allocation of GB cod, consistent with regulations implementing Amendment 13, as modified by Framework Adjustment 40-B to the Northeast (NE) Multispecies Fishery Management Plan (FMP) for fishing year (FY) 2006. The intent is to allow regulated harvest of groundfish by the GB Cod Hook Sector (Sector), consistent with the objectives of the FMP.

DATES: The Sector Operations Plan was approved on April 25, 2006.

ADDRESSES: Copies of the Sector Operations Plan and the Supplemental Environmental Assessment (EA) are available upon request from the NE Regional Office at the following mailing address: George H. Darcy, Assistant Regional Administrator for Sustainable Fisheries, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. These documents may also be requested by calling (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@NOAA.gov*.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 13 to the FMP (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of TAC for a specific groundfish species, implemented restrictions that apply to all sectors, authorized the Sector, established the GB Cod Hook Sector Area (Sector Area), and specified a formula for the allocation of GB cod TAC to the Sector. Framework Adjustment 40-B (70 FR 31323, June 1, 2005) modified that process by allowing any vessel, regardless of gear used in previous fishing years, to join the Sector. All landings of GB cod by Sector participants, regardless of gear previously used, are used to determine the Sector's GB cod allocation for a particular fishing year. The Sector was authorized for FY 2005 and, based upon the GB cod landings history of its 49 members, was allocated 455 mt of cod, which was 11.12 percent of the total FY 2005 GB cod TAC.

In accordance with the regulations that specify the process of Sector approval, on January 23, 2006, the Sector submitted to NMFS an Operations Plan, Sector Agreement, and a Supplemental EA that analyzes the impacts of the proposed Operations Plan. Subsequent to their initial submission, the Sector revised the documents and submitted a final version on March 8, 2006. According to these documents, the Sector will be overseen by a Board of Directors and a Sector Manager. Consistent with Amendment 13, the cod TAC for the Sector is based upon the number of Sector participants and their historic landings of GB cod. In addition, participating vessels will be required to fish under their Amendment 13 DAS allocations to account for any incidental groundfish species that they may catch while fishing for GB cod. Once the GB cod TAC is reached, participating vessels will not be allowed to fish under a day-at-sea (DAS)(category A or B DAS), possess or land GB cod or other regulated species managed under the FMP, or use gear capable of catching groundfish (unless fishing under recreational or charter/party regulations) for the remainder of the fishing year.

With three substantive exceptions, the proposed FY 2006 Sector Operations Plan contained the same elements as the FY 2005 Sector Operations Plan. These exceptions are proposed exemptions from the differential DAS counting requirements, from the DAS Leasing Program vessel size restrictions, and the 72-hr observer notification requirement. Rationale by the Sector for these proposed exemptions can be found in the Federal Register notice soliciting public comment on the FY 2006 GB Cod Hook Sector Operations Plan and Agreement (71 FR 16122, March 30, 2006). NMFS has approved the continuation of all provisions from the FY 2005 Sector Operations Plan for FY 2006 and, in addition, has approved the exemption from the 72-hr observer notification requirement.

NMFS has not approved the proposed exemption from the differential DAS requirements implemented in the Secretarial emergency action and proposed in Framework Adjustment 42, nor the proposed exemption from the DAS Leasing Program size restrictions. The reasons for this decision can be found below in this notice.

Comments and Responses:

NMFS provided interested parties an opportunity to comment on the Sector Agreement proposed for FY 2006 through notification published in the **Federal Register** on March 30, 2006 (71 FR 16122). Seven comments were received, two from groups representing the fishing industry, one from the New England Fishery Management Council (Council), one from the Maine Department of Marine Resources (MEDMR), two from industry members not associated with the Sector and one from a Sector member.

Based on comments received during the public comment period, NMFS has determined that the exemptions from differential DAS counting and the DAS Leasing Program vessel size restrictions should not be approved at this time, but rather should be deferred to the Council for full discussion. Both of these exemptions would modify effort-based management measures. Given the substantial effort reductions that are necessary in the NE multispecies fishery and the fact that the Sector relies on DAS as a primary effort reduction tool for all stocks except GB cod, NMFS has determined that it is important that the Council discuss in public these proposed exemptions.

After consideration of the proposed Sector Agreement, which contains the Sector Contract and Operations Plan, NMFS has concluded that the Sector Agreement, excluding the proposed exemptions from differential DAS counting and DAS Leasing Program vessel size restrictions, is consistent with the goals of the FMP and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under 50 CFR 648.87. Accordingly, NMFS is granting the Sector an exemption from the 72-hr observer notification requirement when fishing under an A DAS in the Western U.S./Canada Area and approving the continuation of all provisions from the FY 2005 Sector Operations Plan for FY 2006. NMFS may reconsider approval of both the exemption from the differential DAS requirements (effective May 1, 2006, and proposed in FW 42) and an exemption from the DAS Leasing Program vessel size restrictions if the

full Council concludes that the merits of such exemptions justify them, given the potential importance of such measures to effort control.

There are 37 members of the approved Sector. The GB cod TAC calculation is based upon the historic cod landings of the participating Sector vessels, using all gear. The allocation percentage is calculated by dividing the sum of total landings of GB cod by Sector members for the FY 1996 through 2001, by the sum of the total accumulated landings of GB cod harvested by all NE multispecies vessels for the same time period (113,278,842 lb (51,383.9 mt)). The resulting number is 10.03 percent (of the overall GB cod TAC). Based upon these 37 prospective Sector members, the Sector TAC of GB cod is 615 mt (10.03 percent times the fishery-wide GB cod target TAC of 6,132 mt). The fishery-wide GB cod target TAC of 6,132 mt is less than the GB cod target TAC proposed for FY 2006 (7,458 mt; 71 FR 12665; March 13, 2006) because the 7,458 mt included Canadian catch. That is, the fishery-wide GB cod target TAC of 6,132 mt was calculated by subtracting the GB cod TAC specified for Canada under the U.S./Canada Resource Sharing Understanding for FY 2006 (1,326 mt) from the overall GB cod target TAC of 7,458 mt proposed by the Council for FY 2006.

Letters of Authorization will be issued to members of the Sector exempting them, conditional upon their compliance with the Sector Agreement, from the requirements of the GOM cod trip limit exemption program, limits on the number of hooks, the GB Seasonal Closure Area, and the 72-hour observer notification requirement for trips to the U.S./Canada Management Area, as specified in §§ 648.86(b), 648.80(a)(4)(v), 648.81(g), and 648.85(a)(3)(viii), respectively.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 26, 2006.

James P. Burgess,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–4081 Filed 4–26–06; 3:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042506F]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Grouper Individual Fishing Quota (IFQ) Advisory Panel (AHGIFQAP).

DATES: The AHGIFQAP meeting will convene at 1 p.m. on Thursday, May 18 and conclude no later than 3 p.m. on Friday, May 19, 2006.

ADDRESSES: The meeting will be held at the DoubleTree Hotel Tampa Westshore, 4500 West Cypress Street, Tampa, FL 33607; telephone: (813) 879–4800.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Stu Kennedy, Fishery Biologist, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) has begun deliberation of a Dedicated Access Privilege System (DAP) for the Commercial grouper fishery. The Council has appointed an AHGIFQAP composed of commercial grouper fishermen and others knowledgeable about DAP systems to assist in the development of such a program. The Panel will discuss the scope and the general configuration of an IFQ program for the Gulf of Mexico commercial grouper fishery.

Although other non-emergency issues not on the agenda may come before the AHGIFQAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the AHGIFQAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: April 26, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–6487 Filed 4–28–06; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 18 May, 2006 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquires regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 25 April 2006.

Thomas Luebke, AIA,

Secretary.

[FR Doc. 06–4057 Filed 4–28–06; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Consumer Opinion Forum

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed collection of information from persons who may voluntarily register and participate in a Consumer Opinion Forum posted on the CPSC Web site, *http://www.cpsc.gov.* The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 30, 2006.

ADDRESSES: Written comments should be captioned ''Consumer Opinion Forum'' and e-mailed to *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; (301) 04–7671.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is authorized under section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), to collect information, conduct research, perform studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

In order to better identify and evaluate the risks of product-related incidents, the Commission staff seeks to solicit consumer opinions and perceptions related to consumer product use, on a voluntary basis, through questions posted on the CPSC's Consumer Opinion Forum on the CPSC Web site, *http://www.cpsc.gov*. Through the forum, consumers will be able to answer questions and provide information regrading their experiences, opinions and/or perceptions on the use or pattern of use of a specific product or type of product. The Consumer Opinion Forum is intended for consumers, 18 years and older, who have access to the Internet and e-mail, who voluntarily register to participate through a participant registration process, and respond to the questions posted in the Consumer Opinion Forum. New questions will be posted periodically on the CPSC Web site, *http://www.cpsc.gov*, and registered participants will be invited via e-mail to respond to various questions, but not more frequently than once every four weeks.

The information collected from the Consumer Opinion Forum will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information may also assist the Commission in its efforts to support voluntary standards activities, and help the staff identify areas regarding consumer safety issues that need additional research. In addition, based on the information obtained, the staff may be able to provide safety information to the public that is easier to read and is more easily understood by a wider range of consumers. For example, the staff may be able to propose new language or revisions to existing language in warning labels or manuals if the staff finds that certain warning language is perceived by many participants to be unclear or subject to misinterpretation. Finally, the Consumer Opinion Forum may be used to solicit consumer opinions and feedback regarding the effectiveness of product recall communications and in determining what action is being taken by consumers in response to such communications and why. This may aid in tailoring future recall activities to increase the success of those activities. If this information is not collected, the Commission would not have available useful information regarding consumer experiences, opinions, and perceptions related to specific product use, which the Commission relies on in its ongoing efforts to improve the safety of consumer products on behalf of consumers.

B. Estimated Burden

The Commission staff currently estimates that there may be up to 5,000 respondents who register to participate in the Consumer Opinion Forum. The Commission staff estimates that each respondent will take 10 minutes or less to complete the one-time registration process. The Commission staff further estimates that the amount of time required to respond to each set of questions on the Consumer Opinion Forum will be 15 minutes or less. If, at the maximum, each respondent responds to 12 sets of questions over the course of a year, or once a month, the yearly burden would result in approximately 3 hours per year for each respondent. If as many as 5,000 consumers respond, the Commission staff estimates that the annual burden could total approximately 15,833 hours per year.

The Commission staff estimates the value of the time of respondents to this collection of information at $28.75 an hour. This is based on the 2005 U.S. Department of Labor Employer Costs for Employee Compensation. At this valuation, the estimated annual cost to the public of this information collection will be about $455,000 per year.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 26, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 06–4102 Filed 4–28–06; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Request for Public Review And Comment of the New Navstar GPS Space Segment/Navigation User Segment L1c (L1 Civil) Interface Specification (IS)

AGENCY: Department of the Air Force.

ACTION: Notice and Request for Review/Comment of new IS–GPS–800.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) proposes to define and implement new L1C signal as specified in IS–GPS–800, Navstar GPS Space Segment/Navigation User L1C Interfaces. This new Interface Specification (IS), IS-GPS–800, provides detailed and necessary information for the new proposed L1C signal which is planned to be broadcast from the next generation of GPS satellites identified as

Block III. The draft IS–GPS–800 was first available to the public for review and comments on 20 April 2006. The review and comment period will be limited to 45 days from the day it is first made available to the public. The draft document will be available for view and for download at the following Web site: *http://gps.losangeles.af.mil.* Click on ''System Engineering'', then ''Public Interface Control Working Group (ICWG)''. Reviewers should save the document to a local memory location prior to opening and performing the review. It is requested that any review comments be submitted using the comment matrix form provided at the web site.

ADDRESSES: Submit comments to SMC/GPEE, Attn: Lt Sean Lenahan, 483 N Aviation Blvd, El Segundo, CA 90245–2808, Attn: Lt Sean Lenahan. Comments may also be submitted to either the following Internet addresses: *Lawrence.Lenahan@losangeles.af.mil* or *Hudnut@usgs.gov*, or, by fax to 1–310–653–3676.

DATES: The draft IS–GPS–800 will be made available to the public at or about 20 April 2006 and suspense date for comment submittal is 45 days after the release of the document (at or about 24 May 2006).

FOR FURTHER INFORMATION CONTACT: GPEE at 1–310–653–3496, GPS JPO System Engineering Division, or write to one of the addresses above.

SUPPLEMENTARY INFORMATION: The international position, navigation, and timing communities use the Global Positioning System, which employs a constellation of satellites at Medium Earth Orbit to provide continuously, transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–6498 Filed 4–28–06; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Upper Columbia Alternative Flood Control and Fish Operations, Libby and Hungry Horse Dams, MT

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of Availability of a Final Environmental Impact Statement.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Seattle District, announces the availability of the Final Environmental Impact Statement (FEIS) for Upper Columbia Alternative Flood Control and Fish Operations. The U.S. Bureau of Reclamation (Reclamation) is a cooperating agency for this FEIS. The document describes and analyzes the environmental impacts of alternative flood control operations at Libby Dam on the Kootenai River and at Hungry Horse Dam on the South Fork Flathead River. Both dams are located in northwestern Montana. The overall goal of the FEIS is to evaluate effects of alternative dam operations to provide better reservoir and flow conditions at and below Libby and Hungry Horse Dams for anadromous and resident fish listed as threatened or endangered under the Endangered Species Act (ESA), consistent with authorized project purposes, including maintaining the current level of flood control benefits. Two new alternatives for Libby Dam were added in the FEIS and the Corps is particularly interested in any comments on those alternatives which are described in Section 2.2 and evaluated in Section 3.3 of the FEIS.

DATES: A Record of Decision (ROD) will be issued by each agency no sooner than May 30, 2006 (the first business day at least 30 days after the Environmental Protection Agency's Notice of Availability for this FEIS in the April 28, 2006, **Federal Register**).

ADDRESSES: The FEIS may be accessed online at *http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=VARQ&pagename=VARQ.*

Compact discs or hard copies of the entire document or the executive summary are available upon request from the address below. Mail comments relating to the FEIS to Mr. Evan Lewis, Environmental Resources Section, U.S. Army Corps of Engineers, Seattle District, P.O. Box 3755, Seattle, Washington 98124–3755, or submit electronic comments to *uceis@usace.army.mil.* For electronic comments, please include your name and address in your message. Comments may also be sent via fax to (206) 764–4470.

FOR FURTHER INFORMATION CONTACT: Mr. Evan Lewis at (206) 764–6922, or E-mail: *evan.r.lewis@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Corps, in cooperation with Reclamation, has prepared an FEIS that considers alternative flood control and fish operations at Libby and Hungry Horse dams in northwestern Montana. The FEIS evaluates an action and a no-action alternative for Hungry Horse Dam (operated by Reclamation), and 5 action alternatives and a no-action alternative for Libby Dam (operated by the Corps).

Hungry Horse alternatives are:

- Alternative HS (No Action): Hungry Horse Dam operations using Standard flood control (FC) with bull trout and salmon augmentation flows. In very general terms, Standard FC operations are based on the principle of providing deep drafts for flood control, then minimizing outflow during the refill period from May through June 30.
- Alternative HV (Preferred Alternative): Hungry Horse Dam operations using variable discharge (VARQ) FC to increase the likelihood of refill (store more water) with bull trout and salmon augmentation flows (seasonal flow targets to enhance conditions downstream for these species). This is the current interim operation at Hungry Horse Dam.

Libby Dam alternatives are:

- Alternative LS1 (No Action): Libby Dam operations using Standard FC with sturgeon, bull trout, and salmon flow augmentation. Sturgeon flow augmentation would provide tiered sturgeon volumes, as adopted in the 2006 U.S. Fish and Wildlife Service (FWS) Biological Opinion (BiOp) on Libby Dam operations, using a maximum Libby Dam release rate up to the existing powerhouse capacity (about 25,000 cubic feet per second, or 25 kcfs). Dam releases for sturgeon flows would be timed and optimized to provide for temperatures of 50 ° F with no more than a 3.6 ° F drop for all of the Libby alternatives.
- Alternative LV1: Libby Dam operations similar to Alternative LS1, but with VARQ FC rather than Standard FC. Alternative LV1 is the current interim operation at Libby Dam.
- Alternative LS2: Libby Dam operations similar to Alternative LS1, except that sturgeon flow augmentation would provide tiered sturgeon volumes using a maximum Libby Dam release rate at some level up to 10 kcfs above the approximately 25 kcfs powerhouse capacity. Alternative LS2 does not identify a specific mechanism to achieve the 10 kcfs of additional flow and the corresponding analysis presumes that the full 10 kcfs of flow above powerhouse capacity would be provided for all sturgeon flow augmentation events, except when limited to avoid exceeding flood stage of 1,764 feet at Bonners Ferry, Idaho. Therefore, it portrays the maximum extent of impacts associated with these flows.
- Alternative LV2: Libby Dam operations similar to Alternative LV1, except that sturgeon flow augmentation would provide tiered sturgeon volumes

using a maximum Libby Dam release rate at some level up to 10 kcfs above the approximately 25 kcfs powerhouse capacity. As with Alternative LS2, Alternative LV2 does not identify a specific mechanism to achieve the 10 kcfs of additional flow and the corresponding analysis presumes that the full 10 kcfs of flow above powerhouse capacity would be provided for all sturgeon flow augmentation events except when limited to avoid exceeding flood stage of 1,764 feet at Bonners Ferry, Idaho. As with LS2, it portrays the maximum extent of impacts associated with these flows.

• Alternative LSB: Libby Dam operations using Standard FC with sturgeon, bull trout, and salmon flow augmentation. Sturgeon flow augmentation would provide tiered sturgeon volumes consistent with the 2006 FWS BiOp. Annual operations would be based on a scientific approach for testing different releases from Libby Dam and determining the effectiveness for achieving the habitat attributes and meeting the conservation needs established for sturgeon as described in the 2006 BiOp. Specific details are being developed in a Flow Plan Implementation Protocol in collaboration with the states of Montana and Idaho, interested tribes and other Federal agencies. Maximum peak augmentation flows would be provided for up to 14 days, when water supply conditions are conducive, during the peak of the spawning period. After the peak augmentation flows, remaining water in the sturgeon tier would be provided to maximize flows for up to 21 days with a gradually receding hydrograph. Under LSB, Libby Dam would provide sturgeon flow augmentation either with dam releases up to existing powerhouse capacity, or with dam releases to powerhouse capacity plus up to 10 kcfs via the Libby Dam spillway. Under Standard FC, simulations indicate that the appropriate reservoir and water supply conditions to allow for releases of sturgeon flows via the Libby Dam spillway would occur for some period of time in approximately 25% of years. Actual duration and quantity of spill operations would vary in any given year when spill is provided based on actual water supply.

• Alternative LVB (Preferred Alternative): Libby Dam operations similar to Alternative LSB, but with VARQ FC rather than Standard FC. Under VARQ FC, simulations indicate that the appropriate reservoir and water supply conditions to allow for releases of sturgeon flows from the Libby Dam spillway for some period of time would occur in approximately 50% of years. Actual duration and quantity of spill operations would vary in any given year when spill is provided based on actual water supply.

Alternatives LSB and LVB represent new alternatives that were added to the FEIS in response to the U.S. Fish and Wildlife Service's issuance of a new BiOp on Libby Dam operations on Feb. 18, 2006. The 2006 BiOp recommends the implementation of actions by the Corps, including increased releases by Libby Dam in accordance with the Endangered Species Act (ESA). Alternatives LSB and LVB would provide flexibility to operate Libby Dam with a range of releases to achieve habitat attributes for sturgeon using the 2006 FWS BiOp's performance-based approach, with the spillway as the only currently available mechanism for achieving flows up to 10,000 cfs above current powerhouse capacity.

In order to ensure that the Corps' actions are consistent with the terms of the 2006 USFWS BiOp, and due to Reclamation's ongoing consultation under Section 106 of the National Historic Preservation Act (NHPA), Reclamation decided to step down from co-lead status on the FEIS and move to cooperating agency status under NEPA regulations. Each agency will prepare its own Record of Decision (ROD) for its respective dams to implement the FEIS for future operations. The Corps plans to issue a ROD for Libby Dam during the spring of 2006. As a cooperating agency, Reclamation may choose to adopt and/or expand upon portions of the FEIS that apply to Reclamation's actions at Hungry Horse Dam. Reclamation plans to issue a ROD on the proposed implementation of the FEIS at Hungry Horse dam following the Reclamation's completion of NHPA Section 106 consultation and NEPA analysis and documentation. In the interim, Reclamation will continue to implement such operations as described in its March 2002 voluntary Environmental Assessment.

The Corps will accept comments on the FEIS until May 30, 2006. Comments on the FEIS will be addressed in the appropriate agency's ROD.

Copies of the FEIS are available for public review at libraries throughout the potentially affected portions of the Kootenai, Flathead, Clark Fork, Pend Oreille, and upper Columbia basins in the U.S. and Canada. See **ADDRESSES** for instructions for requesting a copy of the FEIS.

The FEIS has been prepared in accordance with (1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and (3) Corps regulations implementing NEPA (ER–200–2–2).

Dated: April 20, 2006.

Debra M. Lewis,

Colonel, District Commander, Seattle District, U.S. Army Corps of Engineers.

[FR Doc. E6–6532 Filed 4–28–06; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Pine Mountain Dam & Lake Project, AR

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Little Rock District will prepare an Environmental Impact Statement (EIS) for the proposed Pine Mountain Dam and Lake Project, AR.

The purpose of the EIS will be to present alternatives and assess the impacts to the human environment associated with providing flood control, recreation and water supply for the surrounding areas in Arkansas and Oklahoma from the proposed project. The study area includes the entire Lee Creek watershed together with the lower Lee Creek reservoir near Van Buren, AR. The proposed project could affect agriculture, recreation, flood control, water supply and natural resources within the study area.

The EIS will evaluate potential impacts (positive and negative) to the natural, physical, and human environment as a result of implementing any of the proposed project alternatives that may be developed during the EIS process.

ADDRESSES: Questions or comments concerning the proposed action should be addressed to: Mr. Ron Carman, USACE, Little Rock District, Planning and Environmental Office, PO Box 867, Little Rock, AR 72203–0867, e-mail: *ron.r.carman@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Ron Carman, (501) 324–5601.

SUPPLEMENTARY INFORMATION:

1. *Study History:* The Pine Mountain Dam project was authorized for

construction by Congress in 1965. Additional studies and a preliminary draft EIS were prepared in the 1970s. In 1980, prior to public review of the EIS, the local sponsor decided not to continue sponsoring the project. In 2000, the River Valley Regional Water District identified themselves as a willing sponsor and requested that the Corps of Engineers reevaluate the project. The proposed Pine Mountain Dam Project is being undertaken by USACE, Little Rock District under the direction of the U.S. Congress. A study will be conducted consisting of major hydraulics and hydrologic investigations, economic analyses, alternative development and related analyses in conjunction with the EIS.

2. *Comments/Scoping Meeting:* Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of oral comments at scoping meetings. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document should address. Oral and written comments receive equal consideration.

Scoping meetings will be held with government agencies and the public in the spring/summer of 2006 in Crawford County, AR. The location, time, and date will be published at least 14 days prior to each scoping meeting. Comments received as a result of this notice and the news releases will be used to assist the District in identifying potential impacts to the quality of the human or natural environment. Affected local, state, or Federal agencies, affected Indian Tribes, and other interested private organizations and parties may participate in the scoping process by forwarding written comments to (see **ADDRESSES**). Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents.

4. *Alternatives/Issues:* The EIS will evaluate the effects of the Pine Mountain Dam and Lake, other practical alternatives, and other identified concerns. Anticipated significant issues to be addressed in the EIS include impacts on: (1) Flooding, (2) water supply, (3) recreation and recreation facilities, (4) stream hydraulics, (5) fish and wildlife resources and habitats, and (6) other impacts identified by the Public, agencies or USACE studies.

5. *Availability of the Draft EIS:* The Draft EIS is anticipated to be available for public review in early 2009 subject to the receipt of federal funding.

6. *Authority:* Pine Mountain Dam and Lake was authorized for construction by the Flood Control Act of 1965 (Title II, Pub. L. 89–298) substantially in accordance with the recommendations of the Chief of Engineers in House Document No. 270, 89th Congress.

Wally Z. Walters,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 06–4061 Filed 4–28–06; 8:45 am]

BILLING CODE 3710–57–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 30, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequent of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 24, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Teacher Quality Enhancement Grants Program (TQE) Scholarship and Teaching Verification Forms on Scholarship Recipients.

Frequency: On occasion; semi-annually; annually.

Affected Public: Individuals or household; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,850.

Burden Hours: 3,090.

Abstract: Students receiving scholarships under section 204(3) of the Higher Education Act incur a service obligation to teach in a high-need school in a high-need LEA. This information collection consists of a contract to be executed when funds are awarded and a separate teaching verification form to be used by students to document their compliance with the contract's conditions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3069. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *IC DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 06–4075 Filed 4–28–06; 8:45am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 31, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 25, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Higher Education Act (HEA) Title II Reporting Forms on Teacher Quality and Preparation.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,309.

Burden Hours: 121,632.

Abstract: The Higher Education Act of 1998 calls for annual reports from states and institutions of higher education (IHE) on the quality of teacher education and related matters (Pub. L. 105–244, section 207:20 U.S.C. 1027). The purpose of the reports is to provide greater accountability in the preparation of America's teaching forces and to provide information and incentives for its improvement. Most IHEs that have teacher preparation programs must report annually to their states on the performance of their program completers on teacher certification tests. States, in turn, must report test performance information, institution by institution, to the Secretary of Education, along with institution rankings. They must also report on their requirements for licensing teachers, state standards, alternative routes to certifications, waivers, and related items.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2975. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to IC *DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to IC *DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–6522 Filed 4–28–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 30, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 25, 2006.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation, and Policy Development.

Type of Review: Regular.

Title: Annual Mandatory Collection of Elementary and Secondary Education Data for the Education Data Exchange Network (EDEN).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,052.

Burden Hours: 476,234.

Abstract: The Education Data Exchange Network (EDEN) is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. To minimize the burden on the data providers, EDEN seeks the transfer of the proposed data as soon as it has been processed for State, District, and School use. These data will then be stored in EDEN and accessed by federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use.

Additional Information: The Department of Education (ED) is specifically requesting the data providers in each the State Education Agency (SEA) to review the proposed data elements to determine which of these data can be provided for the upcoming 2006–2007 school year and which data would be available in later years (2007–2008 or 2008–2009) and which data, if any, is never expected to be available from the SEA. If information for a data group is not available, please provide information beyond the fact that it is not available. Are there specific impediments to providing this data that you can describe? Is the definition for the data group unclear or ambiguous? Do the requested code sets not align with the way your state collects the data? This is very important information because ED intends to make the collection of these data mandatory. ED also seeks to know if the SEA data definitions are consistent and compatible with the EDEN definitions and accurately reflect the way data is stored and used for education by the States, Districts, and Schools. The answers to these questions by the data providers will influence the timing and content of the final EDEN proposal for the collection of this elementary and secondary data. In addition to overall public comments, ED would also like state education data providers to consider and respond to a number of specific questions that were developed during the recent data definition cycle for EDEN 2006–07 data. While most of these questions address the ability of states to provide information, some speak to the potential burden on states associated with overall changes in EDEN. When responding to these questions, please include the question number in your response.

1. Some of the EDEN data groups require additional information in order to interpret it properly; this is loosely described as metadata. For example, state proficiency levels and the levels that make up proficient and higher differ from one state to the next. Similarly, there are numerous data groups that collect information on state-defined items such as truants, persistently dangerous schools, and definition of school year. For all of these examples, additional information is needed in order to fully understand the reported data as well as to understand whether comparisons across the state are (or are not) appropriate. We are currently considering several ways to collect this information including web-based forms and a separate state-level submission file. What would be the most convenient way for your state to initially provide and subsequently update this information?

2. As EDEN matures, we are weighing the costs/benefits of standardizing the naming conventions of the data groups in order to align them more closely with the Federal Enterprise Architecture. We anticipate this effort would result in changes to approximately ⅓ of data group names and we would provide a crosswalk between the old name and the new name of each data group. The numbers assigned to the data groups would not change. What impact would data group name changes have on the burden associated with producing and submitting EDEN data files in your state? If we do elect to make these changes, what tools can ED provide to you to lessen your paperwork burden?

3. For the 2006–07 EDEN data set, we added a new topic area: Finance. This change was based on an understanding that in many states, data for files that include financial information come from a source that is separate from the rest of the EDEN data files. So far, we have moved the following data groups to this new topic area: 574—Federal Funding Allocation Table, 614—REAP Alternative Funding Indicator, 615—RLIS Program Table, 616—Transfer Funds Indicator, plus the two new data groups: Funds Spent on Supplemental Services and Funds Spent on School Choice. Is this conceptual change helpful in your state? Are there other data groups that you recommend that we move to this new topic area?

4. As part of the merge between NCES' Common Core of Data (CCD) and EDEN, we would like to modify the way the CCD ID code for schools and districts are submitted in EDEN data files. The CCD ID code is made up of 3 components (a 2 digit FIPS code, a 5 digit district ID code, and a 5 digit school ID code). CCD collects all 3 of these components separately meaning that for schools, there are 3 ID codes that, together, make a unique identifier. EDEN collects a single 7 digit CCD District ID (FIPS thru District) and a single 12 digit CCD school ID (FIPS thru District thru School). What impact would there be on your state's ability to provide EDEN data files if EDEN changed to the CCD methodology for NCES IDs?

5. For Magnet School Status (at the school level) CCD collects only (1) Yes and (2) No. EDEN is set up to collect 4 categories of information regarding Magnet Schools: (1) Magnet All Students, (2) Magnet Not All Students, (3) Not Magnet, and (4) Not Collected by State. At what level of detail does your state collect information on Magnet Schools? What is the burden to your state to provide the data EDEN is requesting?

6. OSEP has historically collected placement information for school age children by age ranges (6–11, 12–17, and 18–21). For 2006–07, USED is proposing to collect this information using discrete ages (instead of the previously used age ranges). This change would take place in EDEN data group #74, Children with Disabilities (IDEA), in the category set that now contains Educational Environment (IDEA), Disability Category (IDEA), and Age Group (Placement). The comparable data group for early childhood (Data Group #613) already collects placement information by discrete age. How does this change affect your state's reporting ability and burden?

7. How do states track dropouts within each state? Would states be able to report dropout data by age or is this information only available by grade?

8. EDEN currently collects dropout data by grade for students in grades 7–12 but will be adding ungraded as an option for the 2006–07 reporting year. Does your state have a significant number of dropouts in grades other than 7–12 (e.g., a student in grade 6 who reaches the age where dropping out is an option)? Can you report this count as a single number (e.g., total dropouts below 7th grade)?

9. Please examine the two new data groups—Funds Spent on Supplemental Services and Funds Spent on School Choice. What information does your state ask LEAs to report on this subject? Can you provide the information requested? If you cannot provide data for these new data groups for 2006–07,

when will you be able to provide this data?

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 03017. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC_DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *IC_DocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–6526 Filed 4–28–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education, Overview Information; Enhanced Assessment Instruments; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.368.

Dates:

Applications Available: May 1, 2006.

Deadline for Transmittal of Applications: June 15, 2006.

Eligible Applicants: State educational agencies (SEAs); consortia of SEAs.

Estimated Available Funds: $11,680,000 in FY 2005 funds.

Estimated Range of Awards: $500,000 to $2,000,000.

Estimated Average Size of Awards: $1,460,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To enhance the quality of assessment instruments and systems used by States for measuring the achievement of all students.

Priorities: This application includes four absolute and three competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 6112 of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The competitive preference priorities are from Appendix E to the notice of final requirements for optional State consolidated applications submitted under section 9302 of the ESEA, published in the **Federal Register** on May 22, 2002 (67 FR 35967).

Absolute Priorities: For FY 2005, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that address one or more of these priorities.

These priorities are:

a. Collaborate with institutions of higher education, other research institutions, or other organizations to improve the quality, validity, and reliability of State academic assessments beyond the requirements for these assessments described in section 1111(b)(3) of the ESEA;

b. Measure student academic achievement using multiple measures of student academic achievement from multiple sources;

c. Chart student progress over time; and

d. Evaluate student academic achievement through the development of comprehensive academic assessment instruments, such as performance and technology-based academic assessments.

Competitive Preference Priorities: For FY 2005, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we will award up to an additional 35 points to an application, depending on the extent to which the application meets these priorities.

These priorities are: Test accommodations and alternate assessments (up to 15 points), collaborative efforts (up to 10 points), and dissemination (up to 10 points).

Note: The full text of these priorities is included in the notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967) and in the application package.

Program Authority: 20 U.S.C. 7842 and 7301a.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $11,680,000 in FY 2005 funds.

Estimated Range of Awards: $500,000 to $2,000,000.

Estimated Average Size of Awards: $1,460,000.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; consortia of SEAs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:* An application from a consortium of SEAs must designate one SEA as the fiscal agent.

IV. Application and Submission Information

1. *Address to Request Application Package:* Zollie Stevenson, Jr., Student Achievement and School Accountability Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W226, Washington, DC 20202–6132. Telephone: (202) 260–1824 or by e-mail: *Zollie.Stevenson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain 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 this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet, budget section (chart and

narrative), assurances and certifications, response regarding research activities involving human subjects, GEPA 427 response, one-page abstract, personnel resumes, and letters of support; however, discussion of how the application meets the absolute priorities, how well the application meets the competitive preference priorities, and how well the application addresses each of the selection criteria must be included within the page limit.

Our reviewers will not read any pages of your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 1, 2006.

Deadline for Transmittal of Applications: June 15, 2006.

Applications for grants under this competition 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.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition 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 Enhanced Assessment Instruments-CFDA Number 84.368 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 Enhanced Assessment Instruments 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 after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://eGrants.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), and all necessary assurances and certifications. 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 acknowledgement 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 may also 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: Zollie Stevenson, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W226, 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 84.368), 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 84.368), 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 84.368), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from Appendix E to the notice of final requirements published in the **Federal Register** on May 22, 2002 (67 FR 35967) and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award 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.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed three measures for evaluating the effectiveness of the Enhanced Assessment Instruments program: (1) The number of States that participated in pilot activities described in each proposal; (2) the number of States that participated in Enhanced Assessment grant projects funded by the current or prior competitions; and (3) the number of presentations at national conferences sponsored by professional education organizations and papers submitted for publication in refereed journals.

All grantees will be expected to submit an annual performance report documenting their success in addressing the performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sue Rigney, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C139, Washington, DC 20202–6132. Telephone: (202) 260–0931, or by e-mail: *Sue.Rigney@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 25, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–6528 Filed 4–28–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Teacher Incentive Fund; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.374A.

Dates: Applications Available: May 1, 2006.

Deadline for Notice of Intent to Apply: June 15, 2006.

Deadline for Transmittal of Applications: July 31, 2006.

Deadline for Intergovernmental Review: September 28, 2006.

Eligible Applicants: Local educational agencies (LEAs), including charter schools that are LEAs in their State; State educational agencies (SEAs); or partnerships of (a) an LEA, an SEA, or both, and (b) at least one non-profit organization.

Estimated Available Funds: $94,050,000. The funds appropriated for this program become available on July 1, 2006 for a period of 15 months. Therefore, we anticipate making awards using FY 2006 funds early in FY 2007.

Contingent upon the availability of funds and the receipt of a sufficient number of high-quality applications, we may make additional awards, using FY 2007 funds, from the rank-ordered list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$12,000,000.

Estimated Average Size of Awards: $8,000,000.

Estimated Number of Awards: 10–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Teacher Incentive Fund, authorized as part of the FY 2006 Department of Education Appropriations Act, Public Law 109–149, is to support programs that develop and implement performance-based teacher and principal compensation systems in high-need schools.

The specific goals of the Teacher Incentive Fund include: Improving student achievement by increasing teacher and principal effectiveness; reforming teacher and principal compensation systems so that teachers and principals are rewarded for increases in student achievement; increasing the number of effective teachers teaching poor, minority, and disadvantaged students in hard-to-staff subjects; and creating sustainable performance-based compensation systems.

Priorities: We are establishing these priorities for the FY 2006 grant competition (including any awards we make, using FY 2007 funds, from the list of unfunded applications from this competition), in accordance with section 437(d)(1) of the General Education Provisions Act.

Absolute Priority: For the FY 2006 grant competition (including any awards we make, using FY 2007 funds, from the list of unfunded applications from this competition), this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Consistent with the program purpose, the grantee must establish a system that provides teachers and principals, or principals only, serving in high-need schools with differentiated levels of compensation based primarily on student achievement gains at the school and classroom levels. This performance-based compensation system must also (a) consider classroom evaluations conducted multiple times during each school year and (b) provide educators with incentives to take on additional responsibilities and leadership roles.

Competitive Preference Priorities: For the FY 2006 grant competition (including any awards we make, using FY 2007 funds, from the list of unfunded applications from this competition), these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 5 points to an application, depending on the extent to which the application meets the priority.

These priorities are:

Competitive Preference Priority 1: We will award up to an additional 5 points depending on the extent to which the applicant documents or provides a plan to establish ongoing support for and commitment to the performance-based compensation system from a significant proportion of the teachers, the principal, and the community, including the applicable governing authority or LEA, for each participating high-need school.

Competitive Preference Priority 2: We will award up to an additional 5 points depending on the extent to which the applicant will provide differentiated

levels of compensation, which may include incentives, to recruit or retain effective teachers and principals (as measured by student achievement gains) in high-need urban and rural schools, and/or in hard-to-staff subject areas such as mathematics and science.

Definitions: The following definitions apply:

A *high-need school* means a school with more than 30 percent of its enrollment from low-income families, based on eligibility for free and reduced price lunch subsidies or other poverty measures that the State permits the LEAs to use. A middle or high school may be determined to meet this definition on the basis of poverty data from feeder elementary schools.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, cost-sharing requirements, selection criteria, and performance measures. Section 437(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program authorized as part of the FY 2006 Department of Education Appropriations Act, Public Law 109–149, and therefore these rules qualify for this exemption. To ensure timely grant awards, the Secretary has decided, under section 437(d)(1), to forego public comment on the priorities, definitions, cost-sharing requirements, selection criteria, and performance measures. These priorities, definitions, cost-sharing requirements, selection criteria, and performance measures will apply to the FY 2006 grant competition (including any awards we make, using FY 2007 funds, from the list of unfunded applications from this competition).

Program Authority: Pub. L. 109–149, 119 Stat. 2864–65.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $94,050,000. The funds appropriated for this program become available on July 1, 2006 for a period of 15 months. Therefore, we anticipate making awards using FY 2006 funds in early FY 2007.

Contingent upon the availability of funds and the receipt of a sufficient number of high-quality applications, we may make additional awards, using FY 2007 funds, from the rank-ordered list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$12,000,000.

Estimated Average Size of Awards: $8,000,000.

Estimated Number of Awards: 10–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs, including charter schools that are LEAs in their State; SEAs; or partnerships of (a) an LEA, an SEA, or both, and (b) at least one non-profit organization.

2. *Cost-Sharing:* The grantee must ensure that, in each applicable budget year, an increasing share of funds from sources other than this grant will be used to pay for earned differential compensation costs as they are phased in during the performance period. In the final year of the performance period, the grantee must ensure that at least 75 percent of the differentiated compensation costs are not paid from this grant.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *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 84.374A.

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 one of the individuals listed under *For Further Information Contact* in section VII. of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of entities that intend to apply for funding.

Therefore, we strongly encourage each potential applicant to send a notification of its intent to apply for funding to the following email address: *TIF@ed.gov.* The notification of intent to apply for funding is optional and should not include information regarding the proposed application.

Page Limit: Applicants are strongly encouraged to limit their application to 40 pages.

3. *Submission Dates and Times:* Applications Available: May 1, 2006.

Deadline for Notice of Intent to Apply: June 15, 2006.

Deadline for Transmittal of Applications: July 31, 2006. Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 28, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2006. Teacher Incentive Fund-CFDA Number 84.374A is one of the programs included in this

project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Teacher Incentive Fund at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assests/GrantsgovCoBrandBrochure8X11.pdf*). You must also provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact,* and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.374A, 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 84.374A, 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.374A, 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 (SF 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are as follows:

(a) *Need* (5 points). The extent to which the applicant describes the scope and size of the project and the need for the project, including information on student academic achievement and the quality of the teachers and principals in the LEA(s) and high-need schools that will be served by the project.

(b) *Project Design* (50 points). (1) The extent to which the performance-based compensation system will reward teachers and principals who raise student academic achievement.

(2) The extent to which the applicant describes the performance-based teacher and principal compensation system that the applicant proposes to develop, implement, or expand, including the extent to which the applicant will build the capacity of teachers and principals through activities such as professional development to raise student achievement and to provide students with greater access to rigorous coursework.

(3) The extent to which the applicant's proposed project includes valid and reliable measures of student achievement—including statewide assessment scores as appropriate for this purpose—as the primary indicator of teacher and principal effectiveness in the proposed performance-based compensation system.

(4) The extent to which the applicant proposes to develop and implement a fair, rigorous and objective process to evaluate teacher and principal performance multiple times throughout the school year.

(c) *Adequacy of Resources* (20 points). (1) The extent to which the applicant provides a thorough explanation of how the applicant will use funds awarded under the grant together with the required matching funds to carry out the program purpose.

(2) The extent to which the applicant provides a detailed plan, including documentation of resources, for sustaining its performance-based compensation system after the grant period ends.

(3) The extent to which the applicant includes a thorough description of its current data-management capacity and proposed areas of data management development in order to implement a performance-based compensation system in which differentiated compensation is based primarily on student academic achievement.

(d) *Quality of the Management Plan and Key Personnel* (15 points). (1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, milestones, and processes for continuous improvement to accomplish project tasks.

(2) The qualifications, including experience, education, and training of proposed key personnel.

(e) *Evaluation* (10 points). (1) The extent to which the applicant's evaluation plan includes the use of objective measures that are clearly related to the goals of the project to raise student achievement and increase teacher effectiveness, including the extent to which the evaluation will produce quantitative and qualitative data.

(2) The extent to which the applicant includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(3) The extent to which the applicant commits to participating in a rigorous national evaluation that will provide a common design methodology, data collection instruments, and performance measures for all grantees funded under this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of the project period, recipients must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Pursuant to the Government Performance and Results Act (GPRA), the Department has established the following performance measures that it will use to evaluate the overall effectiveness of the grantee's project, as well as the TIF program as a whole:

(1) Changes in LEA personnel deployment practices, as measured by changes over time in the percentage of teachers and principals in high-need schools who have a record of effectiveness; and

(2) Changes in teacher and principal compensation systems in participating

LEAs, as measured by the percentage of a district's personnel budget that is used for performance-related payments to effective (as measured by student achievement gains) teachers and principals.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures. The Department will use the applicant's performance data for program management and administration, in such areas as determining new and continuation funding and planning technical assistance.

VII. Agency Contacts

For Further Information Contact: Margaret McNeely, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W103, Washington, DC 20202–6200, or Sheila Sjolseth, Department of Education, 400 Maryland Avenue, SW., room 3W237, Washington, DC 20202–6200. Or by phone at (202) 205–5224. Or by e-mail: *tif@ed.gov* or by Internet at the following Web site: *http://www.ed.gov/programs/teacherincentive/index.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the individuals listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: April 26, 2006.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E6–6531 Filed 4–28–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, May 18, 2006, 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order
Introductions
Review of Agenda
Approval of April Minutes
6:15 p.m.—Deputy Designated Federal Officer's Comments
6:35 p.m.—Federal Coordinator's Comments
6:40 p.m.—Ex-officios' Comments
6:50 p.m.—Public Comments and Questions
7 p.m.—Task Forces/Presentations
- Land Acquisition Study Statement of Work
- Water Disposition/Water Quality Task Force—End State Maps

8 p.m. Public Comments and Questions
8:10 p.m. Break
8:20 p.m. Administrative Issues
- Preparation for June Presentation
- Budget Review
- Review of Work Plan
- Review of Next Agenda

8:30 p.m. Review of Action Items
8:35 p.m. Subcommittee Report
- Executive Committee—Chairs Meeting Review

8:50 p.m. Final Comments
9 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on April 25, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–6524 Filed 4–28–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three-year

extension to the DOE–887, ''DOE Customer Surveys,'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by June 30, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Kara Norman. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*kara.norman@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Alternatively, Kara Norman may be contacted by telephone at 202–287–1902.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Kara Norman at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

On September 11, 1993, the President signed Executive Order No. 12862 aimed at ''* * * ensuring the Federal government provides the highest quality service possible to the American people.'' The Order discusses surveys as a means for determining the kinds and qualities of service desired by Federal Government customers and for determining satisfaction levels for existing services. These voluntary customer surveys will be used to ascertain customer satisfaction with the Department of Energy in terms of services and products. Respondents will be individuals and organizations that are the recipients of the Department's services and products. Previous customer surveys have provided useful information to the Department for assessing how well the Department is delivering its services and products and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis, and are used to satisfy the requirements and the spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a three-year extension of the expiration date of approval for the Form DOE–887 ''DOE Customer Surveys''. Examples of previously conducted customer surveys are available upon request. Our planned activities in the next three years reflect our increased emphasis on and expansion of these activities, including an increased use of electronic means for obtaining customer input (World Wide Web).

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average .25 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, April 19, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–6527 Filed 4–28–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed changes and three-year extension to the Form EIA–851A, ''Domestic Uranium Production Report (Annual),'' Form EIA–851Q, ''Domestic Uranium Production Report (Quarterly),'' and Form EIA–858, ''Uranium Marketing Annual Survey.''

DATES: Comments must be filed by June 30, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Douglas Bonnar. To ensure receipt of the comments by the due date, submission by FAX (202–287–1944) or e-mail (*douglas.bonnar@eia.doe.gov*) is recommended. The mailing address is U.S. Department of Energy, EI–52, Forrestal Building, U.S. Department of Energy, telephone at (202–287–1911).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Douglas Bonnar at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Form EIA–851A collects data on uranium milling and processing, uranium feed sources, employment, drilling, expenditures (for drilling, production, and land/other), and uranium mining. Currently, the reporting burden is estimated to average 2 hours per response. The data are used by public and private analysts and policy makers to monitor the domestic uranium mining and milling industry. Form EIA–851A is completed by uranium producers and firms with uranium exploration, drilling, mining, and reclamation activities in the U.S. (that is, within the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam, and other U.S. possessions) during the survey year. Published data appear on the EIA Web site at *http://www.eia.doe.gov/cneaf/nuclear/dupr/dupr.html.*

Form EIA–851Q collects data on monthly uranium production and sources (mines and other). Currently, the reporting burden is estimated to average 0.75 hours per response. The data are used by public and private analysts, the Department of Commerce's International Trade Administration and policy makers to monitor the domestic uranium mining industry. U.S. uranium producers report on the EIA–851Q. Published data appear in the EIA Web site on *http://www.eia.doe.gov/cneaf/nuclear/dupr/qupd.html.*

Form EIA–858 collects data on contracts, deliveries (during the report year and projected for the next ten years), enrichment services purchased, inventories, use in fuel assemblies, feed deliveries to enrichers (during the report year and projected for the next ten years), and unfilled market requirements for the next ten years. Currently, the reporting burden is estimated to average 14 hours per response. The data are used by public and private analysts and policy makers to monitor the domestic uranium market. Form EIA–858 is completed by uranium suppliers and owners and operators of U.S. civilian nuclear power reactors firms and individuals that were involved in the U.S. uranium industry (that is, within the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam, and other U.S. possessions) during the survey year. Published data appear in the EIA Web site on *http://www.eia.doe.gov/cneaf/nuclear/umar/umar.html.*

II. Current Actions

EIA will be requesting a three-year extension of approval to its 3 uranium surveys with the following 2 survey changes.

Form EIA–851A ''Domestic Uranium Production Report (Annual)'': EIA proposes slightly increasing the collection of details related to four of the seven current data items, (Item 1: Facility Information; Item 2: Milling and Processing; Item 3: Feed Source; Item 4: Mine Production; Item 5: Employment; Item 6: Drilling; and Item 7: Expenditures.) The annual burden associated with the collection of this additional detail would be increased by 1 hour for an estimated average 3 hours per response.

Specifically, EIA proposes the additional detail of mine production by mine name, by type, by capacity, by State, and by owner in Item 4; employment by State in Item 5; by exploration drilling and by development drilling in Item 6; and land, exploration, and reclamation expenditures in Item 7. These details were not collected previously because of the small U.S. production industry, and this increase in burden is minimal. Items 1 through 3 will not collect additional detail information.

Form EIA–858 ''Uranium Marketing Annual Survey'': EIA proposes collecting one new data price (*Average-Price per Separative Work Unit (SWU)*) in Item 2: Enrichment Services Purchased by Owners and Operators of Civilian Nuclear Power Reactors. The annual burden would be increased by 1 hour for an estimated average 15 hours per response.

The term ''SWU'' stands for ''Separative Work Unit''. It is a measure of the amount of work (energy) that is required to separate raw uranium into two components—a valuable component (U235) and a waste component (U238). Generally speaking, the more SWUs that are expended in the separation process, the greater the degree of efficiency of separation; and the less valuable material (U235) that is lost in the U238 waste stream. However, the energy that goes into separating uranium has a cost associated with it.

EIA already collects information on raw uranium price and quantities purchased. However, this provides only a partial picture of the market. EIA now proposes to collect average SWU price data from nuclear electric utilities on an

annual basis because this information is critical to understanding the overall dynamics and underlying fundamentals of the current nuclear fuels market and utility choices.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 3 hours per response for Form EIA–851A, 0.75 hours per response for Form EIA–851Q, and 15 hours per response for Form EIA–858. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, April 19, 2006.

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Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–6529 Filed 4–28–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8163–9]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of Five New Reference or Equivalent Methods

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of five new reference or equivalent methods for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated two new reference methods for measuring concentrations of nitrogen dioxide (NO_2) and carbon monoxide (CO) in the ambient air, and three new equivalent methods for measuring concentrations of sulfur dioxide (SO_2) and ozone (O_3) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of two new reference methods for measuring concentrations of NO_2 and CO in the ambient air, and three new equivalent methods for measuring concentrations of SO_2 and O_3 in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for NO2 is an automated method (analyzer) that utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. This newly designated NO_2 reference method is identified as follows:

RFNA–0506–0157, ''Horiba Instruments Incorporated Model APNA–370 Ambient NO_X Monitor,'' standard specification, operated with a full scale fixed measurement range of 0–0.50 ppm with the automatic range switching off, at any ambient temperature in the range of 20 °C to 30 °C, and with a 0.3 micrometer sample particulate filter installed.

The new reference method for CO is an automated method (analyzer) that utilizes the measurement principle (non-dispersive infra-red absorption photometry) and calibration procedure specified in appendix C of 40 CFR part 50. This newly designated CO reference method is identified as follows:

RFCA–0506–158, ''Horiba Instruments Incorporated Model APMA–370 Ambient CO Monitor,'' operated with a full scale fixed measurement range of 0–50 ppm, with the automatic range switching off, at any environmental temperature in the range of 20 °C to 30 °C.

The new equivalent method for SO_2 is an automated method (analyzer) that utilizes a measurement principle based on ultraviolet fluorescence. This newly designated SO_2 equivalent method is identified as follows:

EQSA–0506–159, ''Horiba Instruments Incorporated Model APSA–370 Ambient $SO_2$2 Monitor,'' operated with a full scale fixed measurement range of 0–0.50 ppm, with the automatic range switching off, at

any environmental temperature in the range of 20 °C to 30 °C.

The two new equivalent methods for O_3 are automated methods (analyzers) that utilize a measurement principle based on absorption of ultraviolet light by ozone at a wavelength of 254 nm. These newly designated equivalent methods are identified as follows:

EQOA–0506–160, ''Horiba Instruments Incorporated APOA–370 Ambient O_3 Monitor,'' standard specification, operated with a full-scale fixed measurement range of 0–0.5 ppm, with the automatic range switching off, at any temperature in the range of 20 to 30 °C.

EQOA–0506–161, ''Seres OZ 2000 G Ozone Ambient Air Analyzer,'' operated with a full scale range of 0–0.5 ppm, at any temperature in the range of 20 °C to 30 °C, and with or without either of the following options: Internal ozone generator, teletransmission interface.

Applications for the Horiba reference and equivalent method determinations were received by the EPA on August 23 (2), September 9, and September 23, 2005. The Horiba methods are available commercially from the applicant, Horiba Instruments Incorporated, 17671 Armstrong Avenue, Irvine, CA 92614 (*http://www.horiba.com*). The Seres equivalent method application was received by the EPA on November 9, 2005, and the Seres method is available commercially from the applicant, Seres, 360, Rue Louis de Broglie, La Duranne BP 87000, 13793 Aix en Provence, Cedex 3, France (*http://www.seres-france.com*).

A test analyzer representative of each of these methods has been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicants in the respective applications, EPA has determined, in accordance with part 53, that each of these methods should be designated as a reference or equivalent method, as applicable. The information submitted by the applicants in their respective applications will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, each of these methods is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designation method description (see the identifications of the methods above).

Use of each method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1,'' EPA–454/R–98–004 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 (Modifications of Methods by Users) of appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the

method should be directed to the applicant.

Lawrence W. Reiter,

Director, National Exposure Research Laboratory.

[FR Doc. E6–6539 Filed 4–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8164–1]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, P.L. 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to discuss the FY06–07 NACEPT agenda, including sustainable water infrastructure, environmental stewardship, cooperative conservation, energy and the environment, environmental technology, EPA's 2006–2011 Draft Strategic Plan, and environmental indicators. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

DATES: NACEPT will hold a two day open meeting on Thursday, May 18, from 8:30 a.m. to 5:30 p.m. and Friday, May 19, from 9:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at The Madison Hotel, 1177 15th Street, NW., Washington, DC 20005. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov,* (202) 233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–233–0061 or *altieri.sonia@epa.gov.* To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 17, 2006.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E6–6540 Filed 4–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8163–6]

SES Performance Review Board; Membership

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given of the membership of the EPA Performance Review Board.

DATES: This is effective on May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Judith M. King, Director, Executive Resources Staff, 3611A, Office of Human Resources, Office of Administration and Resources Management, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202) 564–0400.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointment authority relative to the performance of the senior executive.

Members of the EPA Performance Review Board are:

William G. Laxton (Chair), Acting Director, Office of Human Resources, Office of Administration and Resources Management

George W. Alapas, Deputy Director for Management, National Center for Environmental Assessment, Office of Research and Development

Gerald M. Clifford, Deputy Assistant Administrator, Office of International Affairs

Kerrigan G. Clough, Deputy Regional Administrator, Region 8

Howard F. Corcoran, Director, Office of Grants and Debarment, Office of Administration and Resources Management

Nanci E. Gelb, Deputy Director, Office of Ground Water and Drinking Water, Office of Water

Robin L. Gonzalez, Director, National Technology Services Division-RTP, Office of Environmental Information

Gregory A. Green, Deputy Director, Office of Air Quality Planning and Standards, RTP, Office of Air and Radiation

Sally C. Gutierrez, Director, National Risk Management Research Laboratory, Cincinnati, Office of Research and Development

Susan B. Hazen, Principal Deputy Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances

Karen D. Higgenbotham (Ex-Officio), Director, Office of Civil Rights, Office of the Administrator

Nancy J. Marvel, Regional Counsel, Region 9, Office of Enforcement and Compliance Assurance

Kathleen S. O'Brien, Deputy Director, Office of Planning, Analysis, and Accountability, Office of the Chief Financial Officer

James T. Owens III, Director, Office of Administration and Resources Management, Region 1

George Pavlou, Director, Emergency and Remedial Response Division, Region 2

Stephen G. Pressman, Associate General Counsel (Civil Rights), Office of General Counsel

Elizabeth Southerland, Director, Assessment and Remediation Division, Office of Solid Waste and Emergency Response

Cecilia M. Tapia, Director, Superfund Division, Region 7

Louise P. Wise, Principal Deputy Associate Administrator for Policy, Economics and Innovation, Office of the Administrator

Judith King (Executive Secretary), Acting Director, Executive Resources Staff, Office of Human, Resources, Office of Administration and Resources Management

Dated: April 21, 2006.

Sherry A. Kaschak,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. E6–6537 Filed 4–28–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

AGENCY: Export-Import Bank of the United States.

ACTION: Cancellation of a Government in the Sunshine Meeting.

ORIGINAL TIME AND PLACE: Thursday, April 27, 2006 at 9:30 a.m.

PLACE: Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

The Export-Import Bank of the United States has cancelled the Government in the Sunshine meeting which was scheduled for April 27, 2006. The Bank will reschedule this meeting at a future date. Earlier announcement of this cancellation was not possible.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

Howard A. Schweitzer,

General Counsel (Acting).

[FR Doc. 06–4101 Filed 4–26–06; 4:08 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 16, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Biegert Family Trust, Laramie, Wyoming, its trustees, Larry R. Cox; Henderson, Nebraska, Judith Ackland, Geneva, Nebraska, and Larry R. Cox, individually; Charles Flaming, individually, and as owner of Sadle Cattle Company, Inc., both of Paxton, Nebraska; Alan Janzen, Christopher Vanderneck, Matthew D. Siebert, Fredrick Regier, Arvid Janzen, and Brian Janzen, all of Henderson, Nebraska; Ronald Preheim, Aurora, Nebraska; Jeff Pribbeno, Imperial, Nebraska; and Wesley Kroeker, Enid, Oklahoma; and thereby indirectly acquire shares of Henderson State Company, Henderson, Nebraska, of Henderson State Bank, Henderson, Nebraska.

Board of Governors of the Federal Reserve System, April 26, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–6530 Filed 4–28–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 27 and 28, 2006

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 27 and 28, 2006.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 4¾ percent.

The vote encompassed approval of the paragraph below for inclusion in the statement to be released shortly after the meeting:

''The Committee judges that some further policy firming may be needed to keep the risks to the attainment of both sustainable economic growth and price stability roughly in balance. In any event, the Committee will respond to changes in economic prospects as needed to foster these objectives.''

[1] Copies of the Minutes of the Federal Open Market Committee Meeting on March 27 and 28, 2006, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

By order of the Federal Open Market Committee, April 20, 2006.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. E6–6492 Filed 4–28–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–0222]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

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. Written comments should be received within 60 days of this notice.

Proposed Project

Questionnaire Design Research Laboratory (QDRL) 2007–2009, (OMB No. 0920–0222)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Questionnaire Design Research Laboratory (QDRL) conducts questionnaire pre-testing and evaluation activities for CDC surveys (such as the NCHS National Health Interview

Survey, OMB No. 0920–0214) and other federally sponsored surveys. The QDRL conducts cognitive interviews, focus groups, mini field-pretests, and experimental research in laboratory and field settings, both for applied questionnaire evaluation and more basic research on response errors in surveys. The most common questionnaire evaluation method is the cognitive interview. In a cognitive interview, a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of 10–15 interviews; ideally, the questionnaire is re-worked between rounds and revisions are tested iteratively until interviews yield relatively few new insights. When possible, cognitive interviews are conducted in the survey's intended mode of administration. For example, when testing telephone survey questionnaires, participants often respond to the questions via a telephone in a laboratory room. Under this condition, the participant answers without face-to-face interaction. QDRL staff watch for response difficulties from an observation room, and then conduct a face-to-face debriefing with in-depth probes. Cognitive interviewing provides useful data on questionnaire performance at minimal cost and respondent burden. Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. NCHS is requesting 3 years of OMB Clearance for the project. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents per year	Number of responses/ respondent	Avg. burden response (in hours)	Total burden hours
2007 test volunteers	500	1	1.2	600

Dated: April 25, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–6501 Filed 4–28–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0273] (formerly 03N–0273)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Research Study Complaint Form

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Research Study Complaint Form'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 16, 2005 (70 FR 74817), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0579. The approval expires on March 31, 2009. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: April 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–6457 Filed 4–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0166]

Agency Emergency Processing Under the Office of Management and Budget Review; MedWatch—The Food and Drug Administration Safety Information and Adverse Event Reporting Program; Proposal to Survey MedWatch Partners Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). This notice solicits comments on a proposal for the MedWatch program to deploy and conduct a web-based customer satisfaction survey of certain health care professional trade and specialty organizations that voluntarily have chosen to participate in the FDA MedWatch's Partners program. The survey will solicit information about the utility of the FDA MedWatch safety alerts and monthly safety labeling changes that are posted on the MedWatch Web site and disseminated to partner organizations for sharing with members of the organizations.

DATES: Fax written comments on the collection of information by May 31, 2006. FDA is requesting approval of this emergency processing by May 31, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this

proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. This information is needed immediately so that the agency can effectively assess and re-evaluate its FDA MedWatch risk communication efforts in drug safety as part of a broader center level (the Center for Drug Evaluation and Research (CDER)) reorganization action to enhance its risk communication activities for CDER-regulated products, and address public expectations for timely dissemination of clinically useful safety information to both providers and their patients at the point of care.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MedWatch—The FDA Safety Information and Adverse Event Reporting Program; Proposal to Survey MedWatch Partners Organizations

The MedWatch Partners program is an FDA outreach effort directed at health care provider professional organizations. The effort facilitates the timely dissemination of clinically important new safety information on the drugs, devices, and other human medical care products regulated by FDA and prescribed, dispensed, or used by the membership of these professional societies. In voluntarily agreeing to work with FDA MedWatch, these partner organizations disseminate this important safety information to their members and their members' patients so that medical products necessary to efforts to improve a patient's health may be used more safely and reduce the risk of harm.

Risk communication is one of the essential elements in the risk management paradigm accepted as a framework within CDER since described in the ''Report to the FDA Commissioner from the Task Force on Risk Management'' in May 1999. As an agency that regulates a broad range of clinical medical products—drugs, therapeutic biologics, blood products, medical devices, and dietary supplements—FDA's public health mission includes the timely dissemination of new safety information identified during post-marketing surveillance activities. This information includes class 1 recalls, public health advisories, notice of counterfeit drug product, and labeling changes such as new black box warnings or contraindications to drug product use. In recent years, there has been a public commitment to actively disseminating this new safety information, both to health care providers and their patients, and to leveraging this risk communication activity by developing partnerships and alliances with non-governmental organizations. This commitment was explicitly identified as an objective in the strategic plan for ''Improving Patient Safety'' of former Commissioner of Food and Drugs, Mark McClellan. That objective states that FDA will ''take appropriate actions to communicate risks and correct problems associated with medical products'' and ''will identify new ways to inform physicians, pharmacists, nurses, and patients about the safety of FDA-regulated products.''

The MedWatch program is currently located in the Office of Drug Safety, CDER. MedWatch disseminates safety information on FDA-regulated medical products to both health care professional and consumer/patient audiences. MedWatch maintains a comprehensive Web site at *http://www.fda.gov/medwatch* for this purpose. The FDA MedWatch program has about 120 Partner organizations that represent clinical care providers (doctors, nurses, pharmacists, etc.). As a ''Partner,'' the organization has agreed to support the goals of the MedWatch program: Participating in the dissemination of FDA-approved safety information and promoting the voluntary reporting to FDA of adverse events. In order to communicate quickly with MedWatch Partner organizations, a listserve, supported by the National Institutes of Health, is maintained, with contacts for each MedWatch Partner group. Partner organizations have voluntarily agreed to receive these FDA MedWatch safety alerts and monthly safety labeling changes. Each organization receives e-mail notification of two types of FDA MedWatch safety information at the time it is added to the MedWatch Web site—safety alerts for individual products and, once a month, a listing of the 30 to 60 drugs that have had safety labeling changes for that month.

The FDA MedWatch program, in order to implement this safety information dissemination process effectively, needs to evaluate satisfaction of these customer groups so that FDA MedWatch can improve the dissemination process and content of this safety information and increase its use and application to direct patient care and to the public's health.

The purpose of the survey is to fulfill phase one of Executive Order 12862, ''Setting Customer Service Standards,'' which directs agencies to continually reform their management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector. There is no duplication of effort. The MedWatch program is the only one planning to perform this survey. By actively gathering this survey information from MedWatch partner customers, the agency will achieve a better understanding customer satisfaction with this program, and be able to direct limited resources to produce an improved program that is most useful to both health care provider customers and, secondarily, their patients.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Partner Organizations	120	1	120	.5	60

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

This burden estimate of total hours was developed by using: (1) The number of known MedWatch partner health care organizations, (2) the number of times the survey will be deployed, and (3) the expected time to complete the response

based on internal pilot testing of the survey instrument at the agency.

Dated: April 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–6461 Filed 4–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Research Review Subcommittee of the Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of the Subcommittee: Research Review Subcommittee of the 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 on May 19, 2006, from 8 a.m. to 4:30 p.m.

Location: Hilton Hotel, Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 19, 2006, the subcommittee will listen to presentations about the research program at the Office of Vaccines Research and Review (OVRR), Center for Biologics Evaluation and Research (CBER). The program is intended to provide dynamic, responsive, cutting edge research to contribute to OVRR's regulatory mission and facilitate development of safe and effective biological products. The subcommittee will discuss the program and make recommendations to the Vaccines and Related Biological Products Advisory Committee at a future open meeting of the full committee. Information regarding CBER's scientific program is outlined in its Strategic Plan of 2004 and is available to the public on the Internet at: *http://www.fda.gov/cber/inside/mission.htm*. Information regarding FDA's Critical Path to New Medical Products is available to the public on the Internet at: *http://www.fda.gov/oc/initiatives/criticalpath/*.

Procedure: On May 19, 2006, from 8 a.m. to 1 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 12, 2006. Oral presentations from the public will be scheduled between approximately 12 p.m. to 1 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 12, 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.

Closed Committee Deliberations: On May 19, 2006, from 2 p.m. to 4:30 p.m., the meeting will be closed to the public. The meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6) and to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4). The subcommittee will discuss internal research programs in the Office of Vaccines Research and Review, CBER.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster 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: April 21, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–6508 Filed 4–28–06; 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 on May 18, 2006, from 9 a.m. to 4:45 p.m.

Location: Hilton Hotel, Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear presentations and make recommendations on the safety and efficacy of GARDASIL (Human Papillomavirus [Types 6,11,16,18] Recombinant Vaccine) manufactured by Merck.

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 May 11, 2006. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral

presentations should notify the contact person before May 11, 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: April 24, 2006.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. E6–6509 Filed 4–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0401]

Guidance for Industry and Food and Drug Administration Staff: Compliance With the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices.'' The Medical Device User Fee and Modernization Act 2002 (MDUFMA), as amended by the Medical Device User Fee Stabilization Act of 2005 (MDUFSA), requires that FDA issue guidance identifying the circumstances in which the name, abbreviation, or symbol of the manufacturer of an original device is not ''prominent and conspicuous.'' MDUFSA requires that FDA issue guidance no later than 180 days after the date of enactment (August 1, 2005).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance document entitled ''Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0106.

SUPPLEMENTARY INFORMATION:

I. Background

MDUFMA (Public Law 107–250) amended section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) to require a device, or an attachment to the device, to bear prominently and conspicuously the name of the manufacturer, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying the manufacturer. This labeling provision applied to all devices and all device manufacturers.

On August 1, 2005, MDUFSA (Public Law 109–43) amended section 502(u) of the act by limiting the provision to reprocessed single-use devices (SUDs) and the manufacturers who reprocess them. Therefore, section 502(u) of the act, as amended by MDUFSA, no longer sets forth requirements for original equipment manufacturers, unless they also reprocess SUDs. Under the amended provision, if an original device or an attachment to it does not prominently and conspicuously bear the name of the manufacturer of the original device, a generally recognized abbreviation of such name, or a unique and generally recognized symbol identifying such manufacturer, the manufacturer who reprocesses the SUD may identify itself using a detachable label on the packaging of the device.

Section 2(c)(2) of MDUFSA requires that FDA issue guidance not later than 180 days after the date of its enactment to identify the circumstances under which the identifying mark of a manufacturer of an original device is not ''prominent and conspicuous,'' as used in section 502(u) of the act. On October 11, 2005, FDA issued draft guidance describing the circumstances under which the agency would not consider a manufacturer's mark to be prominent and conspicuous. FDA received several comments on the draft guidance, all of which were considered in finalizing the guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive '' Compliance With Section 301 of the Medical Device User Fee and Modernization Act of 2002, as amended—Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1217) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts,

Federal Register reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collection(s) of information in this guidance were approved under OMB control number 0910–0577.

V. 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. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 24, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–6458 Filed 4–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) is responsible for the Evaluation of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major national initiative designed to: (1) Prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse-related problems in communities; and, (3) build prevention capacity and infrastructure at the State/territory and community levels. Five steps comprise the SPF:

- Step 1: Profile population needs, resources, and readiness to address needs and gaps.
- Step 2: Mobilize and/or build capacity to address needs.
- Step 3: Develop a comprehensive strategic plan.
- Step 4: Implement evidence-based prevention programs, policies, and practices.
- Step 5: Monitor, evaluate, sustain, and improve or replace those that fail.

Under a contract with CSAP, an evaluation team will implement a multi-method quasi-experimental evaluation at national, State, and community levels. Evaluation data will be collected from 26 states receiving grants in 2004 and 2005 and as many as 32 non-grantee states that will serve as a comparison group. The primary evaluation objective is to determine the impact of SPF SIG on the SAMHSA National Outcome Measures (NOMs).

This notice invites comment on state-level and community-level data collection instruments. The instruments for assessing state-level change will be included in an OMB review package submitted immediately after the expiration of the comment period and are the main focus of this announcement. These instruments will be reviewed first by OMB to ensure that state-level data collection occurs as specified in the evaluation plan (on or before June 30, 2006). Because the states have not awarded community-level funding, the evaluators will not initiate community-level data collection until late in 2006. Thus, the community-level survey will be submitted as an addendum approximately one month after the comment period expires. However, the instrument is described in this notice and comments on the instrument are invited.

State-Level Data Collection

Two instruments were developed for assessing state-level effects. Both instruments are guides for telephone interviews that will be conducted by trained interviewers three to four times over the life of the SPF SIG award. The *Strategic Prevention Framework Index* will be used to assess the relationship between SPF implementation and change in the national outcome measures. The *State Infrastructure Index* will capture data to assess infrastructure change and to test the relationship of this change to outcomes. Prevention infrastructure refers to the organizational features of the system that delivers prevention services, including all procedures related to planning, data management systems, workforce development, intervention implementation, evaluation and monitoring, financial management, and sustainability. The estimated annual burden for state-level data collection is displayed below in the table.

STATE LEVEL BURDEN ESTIMATE

[Year 1]

Interview guide	Content description	Number of respondents	Number of responses	Hourly burden per response	Total hourly burden
SPF Implementation Index.	SEW activities, indicators for each SPF step, including cultural competence throughout all five steps.	26	1	3	78

STATE LEVEL BURDEN ESTIMATE—Continued

[Year 1]

Interview guide	Content description	Number of respondents	Number of responses	Hourly burden per response	Total hourly burden
State Infrastructure Index.	Assessment of a state's progress over time toward the implementation of these best practices.	26	1	6	156
Total State Level	.....	26	.....	.....	234

Community-Level Data Collection

The Community Level Index is a two-part, web-based survey for capturing information about SPF SIG implementation at the community level. Part 1 of the survey focuses on the five SPF SIG steps and efforts to ensure cultural competency throughout the SPF SIG process. Part 2 will capture data on the specific intervention(s) implemented at the community level including both individual-focused and environmental prevention strategies. Community partners receiving SPF SIG awards will be required to complete the survey every six months, using a secure password system. The survey data will be analyzed in conjunction with state and community outcome data to determine the relationship, if any, between the SPF process and substance use outcomes. This survey will be submitted as an addendum to the forthcoming OMB package approximately one month after the expiration of the comment period. The estimated annual burden for community-level data collection is displayed below. Note that the total burden assumes an average of 15 community-level sub-grantees per state (a total of 390 respondents) and two survey administrations per year. Note also that some questions will be addressed only once and the responses will be used to pre-fill subsequent surveys. In addition, as community partners work through the SPF steps, they will report only on step-related activities. For example, needs assessment activities will likely precede monitoring and evaluation activities. Thus, respondents will answer questions related to needs assessment in the first few reports but will not need to address monitoring and evaluation items until later in the implementation process.

COMMUNITY LEVEL BURDEN ESTIMATE

Community-level instrument section/domain	Number of respondents	Responses per respondent	Burden per response	Total burden
Year 1				
Part I, 1–11 State Responses	26	1	0.08	2.08
Part I, 12–20 Contact Information and Reporting Period	390	1	0.08	31.20
Part I, 21–26 Organization Type and Funding	390	1	0.08	31.20
Part I, 27–33 Cultural Competence, Sustainability, and Framework Progress	390	2	0.17	132.60
Part I, 34–66 Needs and Resources Assessments	390	2	0.50	390.00
Part I, 67–159 Capacity Building Activities	390	2	0.50	390.00
Part I, 160–178 Strategic Plan Development	390	2	0.50	390.00
Part I, 198–216 Systems and Contextual Factors and Closing Questions ..	390	2	1.00	780.00
Part I, subform 217–231 Coalition Organizational Information	390	1	0.17	66.30
Part II 1–40; 45 Intervention Specific Information and Adaptations	390	3	1.00	1,170.00
Review of past responses	390	2	0.50	390.00
Preparation and gathering of supporting materials	390	2	2.00	1,560.00
State Review of Community Responses	26	2	1.00	52.00
Total Year 1 Burden—State-level	26	.....	.....	54.08
Total Year 1 Burden—Community-level	390	.....	.....	5,331
Year 2				
Part I, 27–33 Cultural Competence, Sustainability, and Framework Progress	390	2	0.17	132.60
Part I, 67–15 Capacity Building Activities	390	2	0.50	390.00
Part I, 160–178 Strategic Plan Development	390	2	0.50	390.00
Part I, 179–184 Intervention Implementation	390	2	0.17	132.60
Part I, 198–216 Systems and Contextual Factors and Closing Questions ..	390	2	1.00	780.00
Part II 1–40; 45 Intervention Specific Information and Adaptations	390	3	1.00	1,170.00
Part II 41–44 Intervention Outcomes	390	6	0.17	397.80
Part II subforms Intervention Component Information	390	6	1.00	2,340.00
Review of past responses	390	2	0.50	390.00
Preparation and gathering of supporting materials	390	2	2.00	1,560.00
State Review of Community Responses	26	2	1.00	52.00
Total Year 2 Burden—State-level	26	.....	.....	52.00

COMMUNITY LEVEL BURDEN ESTIMATE—Continued

Community-level instrument section/domain	Number of respondents	Responses per respondent	Burden per response	Total burden
Total Year 2 Burden—Community-level	390			7,683
Year 3				
Part I, 27–33 Cultural Competence, Sustainability, and Framework Progress	390	2	0.17	132.60
Part I, 67–159 Capacity Building Activities	390	2	0.50	390.00
Part I, 179–184 Intervention Implementation	390	2	0.17	132.60
Part I, 185–197 Monitoring and Evaluation	390	2	0.33	257.40
Part I, 198–216 Systems and Contextual Factors and Closing Questions	390	2	1.00	780.00
Part II 1–40; 45 Intervention Specific Information and Adaptations	390	3	1.00	1,170.00
Part II 41–44 Intervention Outcomes	390	6	0.17	397.80
Part II subforms Intervention Component Information	390	6	1.00	2,340.00
Review of past responses	390	2	0.50	390.00
Preparation and gathering of supporting materials	390	2	2.00	1,560.00
State Review of Community Responses	26	2	1.00	52.00
Total Year 3 Burden—State-level	26			52.00
Total Year 3 Burden—Community-level	390			7,550.00
Total Average Annual Burden—Slate-level	26			53.00
Total Average Annual Burden—Community-level	390			6,855.00

Written comments and recommendations concerning the proposed information collection should be sent by May 31, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: April 24, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–6493 Filed 4–28–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Opioid Treatment Data Systems for Disaster Planning Project (Pilot)—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Substance Abuse Treatment (CSAT), has identified a critical need for Opioid Treatment Programs (OTPs, also commonly known as Methadone Clinics) to be able to access limited but specific patient dosage data for patients displaced due to service disruptions affecting the OTP from which they regularly receive treatment (the patient's 'Home OTP'). Service disruptions in home OTPs have ranged in cause from events such as the September 11th terrorist attacks or more recently, Hurricanes Katrina and Rita, to more common events such as snow storms or electrical black-outs.

The proposed system will ensure that, in such circumstances, patients displaced from their home OTPs will still be able to obtain safe and effective treatment at an alternative OTP (referred to in this project as a 'Guest OTP'). In reviewing past events involving OTP service disruptions and their impact on patients, SAMHSA, in tandem with numerous stakeholders, established four basic principles that would guide creation of a deliberately simple, centralized Web-based system to house patient data. Such a system would facilitate guest OTPs in providing safe and effective continuity of treatment for patients temporarily unable to obtain treatment from their Home OTPs due to any form of service disruption. The proposed centralized data system is known as the Opioid Treatment Data Systems for Disaster. Subsequently, in a small sample study of five (5) OTPs, SAMHSA tested a protocol and data collection instrument for use in determining functional requirements for the proposed system. In Fall 2005, SAMHSA provided funding for the current project, to support creation of the necessary infrastructure for a pilot system, to be followed by testing on a regional basis. This pilot project will focus on creating the means by which vital dosage data for OTP patients can be made accessible to guest OTPs called

upon to treat patients of other programs in the event of service disruptions, most specifically, in disaster scenarios, so that patients are not forced during such circumstances to forgo or discontinue treatment. Ultimately, the pilot system will be reviewed to determine its effectiveness and ability to support a national implementation, should funding for such a system become available.

This notice is being provided for a survey to be distributed to OTPs in the region(s) selected by SAMHSA to gather information regarding their present data collection and reporting capabilities and practices. Technical information from the surveys will be used exclusively for development of the overall system and to help inform selection of sites best suited for participation as pilot sites for testing of the Opioid Treatment Data Systems for Disaster Planning. OTP respondents will have the option of completing an on-line or paper version of the survey. The survey consists of approximately 25 questions predominantly formatted as yes/no responses with one to two words fill in the blank responses. The estimated maximum annual response burden to collect this information is as follows:

Number of facilities (OTPs)	Responses per facility	Burden/response (hours)	Annual burden (hours)
200	1	1.0	200

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 25, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–6496 Filed 4–28–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–06–012]

Implementation of Sector Upper Mississippi River

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the stand-up of Sector Upper Mississippi River. Sector Upper Mississippi River is an internal reorganization that combines Group Upper Mississippi River and Marine Safety Office St. Louis into a single command. The Coast Guard has established a continuity of operations order whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official or document.

DATES: This notice is effective April 27, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD08–06–012 and are available for inspection or copying at Commander (dmpl), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael Roschel, Eighth District Planning Office at 504–589–6293.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

The single command center for Sector Upper Mississippi River is located at 1222 Spruce Street, Ste. 8.104E, St. Louis, MO 63103–2825. Sector Upper Mississippi River is composed of a Response Department, Prevention Department, and Logistics Department. Effective April 27, 2006, all existing missions and functions performed by Group Upper Mississippi River and Marine Safety Office St. Louis will be performed by Sector Upper Mississippi River. Group Upper Mississippi River and Marine Safety Office St. Louis will no longer exist as organizational entities.

Sector Upper Mississippi River will be responsible for all Coast Guard Missions in the Sector Upper Mississippi River Marine Inspection zone and Captain of the Port zone. This area of responsibility includes all of Wyoming except for Sweetwater County; Colorado; North Dakota; South Dakota; Kansas; Nebraska; Iowa; all of Missouri with the exception of Perry, Cape Girardeau, Scott, Mississippi, New Madrid, Dunklin, and Pemiscot Counties; that part of Minnesota south of latitude 46°20′ N; that part of Wisconsin south of latitude 46°20′ N, and west of longitude 90°00′ W; that part of Illinois west of longitude 90°00′ W and north of latitude 41°00′ N; and that part of Illinois south of latitude 41°00′ N, except for Jackson, Williamson, Saline, Gellatin, Union, Johnson, Pope, Hardin, Alexander, Pulaski, and Massac Counties; that part of the Upper Mississippi River above mile 109.9, including both banks, and that part of the Illinois River below latitude 41°00′ N.

The boundary changes associated with the implementation of Sector Upper Mississippi River will not affect any of the rights, responsibilities, duties, and authorities of the commanders over the units described in this notice and all previous practices and procedures will remain in effect.

The Sector Upper Mississippi River Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officers of Group Upper Mississippi River and Marine Safety Office St. Louis. The Sector Upper Mississippi River Commander is designated: (a) Captain of the Port (COTP) for the Upper Mississippi River COTP zone; (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) for the Upper Mississippi River COTP zone, consistent with the National Contingency Plan; (d) Officer in Charge of Marine Inspection (OCMI) for the Upper Mississippi River Marine Inspection Zone; and (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC, and Acting OCMI.

A continuity of operations order has been issued ensuring that all previous Group Upper Mississippi River and Marine Safety Office St. Louis practices and procedures remain in effect until superseded by Commander, Sector Upper Mississippi River. This continuity of operations order addresses existing COTP regulations, orders, directives, and policies.

Following is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Upper Mississippi River.

Address: Commander, U.S. Coast Guard Sector Upper Mississippi River, 1222 Spruce Street, Ste. 8.104E, St. Louis, MO 63103–2825.

Contact: General Number, (314) 269–2500, Sector Commander: Captain Suzanne Englebert; Deputy Sector Commander: Lieutenant Commander Frank Kulhawick.

Chief, Prevention Department: (314) 269–2560, Chief, Response Department: (314) 269–2540, Chief, Logistics Department: (314) 269–2510.

Dated: April 19, 2006.

R.F. Duncan,

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

[FR Doc. E6–6459 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request Deferral of Duty on Large Yachts Imported for Sale

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Deferral of Duty on Large Yachts Imported for Sale. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 30, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Tracey Denning, Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Deferral of Duty on Large Yachts Imported for Sale.

OMB Number: 1651–0080.

Form Number: N/A.

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable ''large yacht'' may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions, and non-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: N/A.

Dated: April 24, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–6467 Filed 4–28–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCBP–2006–0023]

Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC)

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will meet in open session.

DATES: Tuesday, May 16, 2006, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC.

If you desire to submit comments, they must be submitted by May 15, 2006. Comments must be identified by USCBP–2006–0023 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *traderelations@dhs.gov* Include docket number in the subject line of the message.
- Mail: Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229.
- Facsimile: 202–344–1969.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202–344–1440; facsimile 202–344–1969.

SUPPLEMENTARY INFORMATION: The sixth meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held at the date, time and location specified above. This notice also announces the expected agenda for that meeting below.

This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Thursday, May 11, 2006, to Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202–344–1440; facsimile 202–344–1969.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Draft Agenda

1. Introductory Remarks.
2. Container Security Issues.
3. WCO (World Customs Organization)/Implementation.
4. Update on HSPD–13/NMSAC (Homeland Security Presidential Directive-13 & National Maritime Security Advisory Committee).
5. Update on Security and Prosperity Partnership (SPP).
6. Security Subcommittee: C–TPAT (Customs-Trade Partnership Against Terrorism).
7. Green Lane Task Force.
8. Textiles & Apparel Entry Processing.
9. E-Manifest for Trucks.
10. ACE (Automated Commercial Environment)/ITDS (International Trade Data System).
11. Radiation Portal Monitoring.
12. Staffing: Import Specialists.
13. Pre-Entry Information.
14. New Action Items.
15. Adjourn.

Dated: April 26, 2006.

Stewart A. Baker,

Assistant Secretary, Office of Policy , United States Department of Homeland Security.

[FR Doc. E6–6541 Filed 4–28–06; 8:45 am]

BILLING CODE 9111–14–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 continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments on the cancellation of Federal assistance loans to any local government.

SUPPLEMENTARY INFORMATION: The Community Disaster Loan (CDL) Program is authorized by section 417 of the Disaster Relief Act of 1974 (Pub. L. 93–288), as amended by the Robert T. Stafford Disaster Relief and Emergency Act of 1988 (Pub. L. 100–707), and implemented by FEMA regulation 44 CFR, subpart K. Community Disaster Loans, section 206.366. The CDL Program offers loans to local governments that have suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and demonstrates a need for Federal financial assistance in order to perform their governmental functions. The loan must be justified on the basis of need and be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and the three succeeding fiscal years.

Collection of Information

Title: Application for Community Disaster Loan Cancellation.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0082.

Form Numbers: FEMA Form 90–5.

Abstract: Local governments may submit an Application for Loan Cancellation through the Governor's Authorized Representative to the FEMA Regional Director prior to the expiration date of the loan. FEMA has the authority to cancel repayment of all or part of a Community Disaster Loan to the extent that a determination is made that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses. Operating budget means actual revenues and expenditures of the local government as published in the official financial statements of the local government.

Affected Public: State, local or tribal governments.

Estimated Total Annual Burden Hours: 1.

Number of Respondents: 1.

Frequency of Response: On occasion.

Hour Burden Per Response: 1 hour.

ANNUAL BURDEN HOURS

Project/Activity (Survey, Form(s), Focus Group, Worksheet, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (A × B)	Total annual burden hours (A × B × C)
FF–90–5	1	1	1	1	1
Total	1	1	1	1	1

Estimated Cost: $15.00 per hour times 1 burden hour equals $15.00.

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 must be submitted on or before June 30, 2006.

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 Mr. Gerald Connelly, (202) 646–3638 for additional information regarding this information collection. . 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: *FEMAInformation-Collections@dhs.gov.*

Dated: April 7, 2006.

Deborah Moradi,

Acting Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–6499 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–11–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: Flood Mitigation Assistance—Flood Mitigation Plan.

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 FEMA 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 impact of flooding on insurable structures.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 240.

Estimated Time per Respondent: 2080 hours to develop a new Mitigation Plan and 8 hours to review submitted plans.

Estimated Total Annual Burden Hours: 250,560.

Frequency of Response: Once.

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 May 31, 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: April 11, 2006.

Deborah Moradi,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E6–6500 Filed 4–28–06; 8:45 am]

BILLING CODE 9110-13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1636–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1636–DR), dated April 12, 2006, and related determinations.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 12, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms and tornadoes during the period of April 1–3, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Conway, Cross, Fulton, Greene, Lawrence, Randolph, and White Counties for Individual Assistance.

Conway, Cross, Fulton, Greene, Lawrence, Randolph, and White Counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6471 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1633–DR]

Illinois; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1633–DR), dated March 28, 2006, and related determinations.

DATES: *Effective Date:* April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 28, 2006:

Randolph County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6474 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1638–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1638–DR), dated April 13, 2006, and related determinations.

DATES: *Effective Date:* April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 13, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, tornadoes, and straight line winds during the period of March 12–13, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Douglas and Wyandotte Counties for Public Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6468 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1635–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1635–DR), dated April 5, 2006, and related determinations.

DATES: *Effective Date:* April 17, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2006:

Butler, Dunklin, St. Francois, and Stoddard Counties for Individual Assistance.

Andrew and Pettis Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program.)

Pemiscot County for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6465 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1631-DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1631–DR), dated March 16, 2006, and related determinations.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 16, 2006:

Bollinger, Daviess, and Ray Counties for Public Assistance.

Benton, Boone, Carroll, Cedar, Greene, Henry, Hickory, Iron, Morgan, Perry, Pettis, Putnam, Randolph, Saline, St. Clair, Webster, and Wright Counties for Public Assistance (already designated for Individual Assistance.)

Bates, Christian, Howard, Monroe, and Montgomery Counties for Public Assistance [Categories C-G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program).

Washington County for Public Assistance [Categories C-G] (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6473 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1637–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1637–DR), dated April 13, 2006, and related determinations.

DATES: *Effective Date:* April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 13, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms and tornadoes on March 12, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Philip Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Delaware County for Individual Assistance.

Delaware County within the State of Oklahoma is eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6466 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1634–DR]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1634–DR), dated April 5, 2006, and related determinations.

DATES: *Effective Date:* April 17, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2006:

Benton, Cannon, Carroll, Cheatham, Cumberland, Davidson, Dickson, Maury, Sumner, Warren, and Weakley Counties for Individual Assistance.

Fayette County for Individual Assistance (already designated for Public Assistance.)

Haywood County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6469 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1634–DR]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1634–DR), dated April 5, 2006, and related determinations.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the Public Assistance Program and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2006:

Fayette County for Public Assistance.

Dyer and Gibson Counties for Public Assistance (already designated for Individual Assistance).

All counties in the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6470 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1624–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1624–DR), dated January 11, 2006, and related determinations.

DATES: *Effective Date:* April 17, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 11, 2006:

Potter County for Individual Assistance (already designated for Public Assistance Category B (emergency protective measures), subject to subsequent designation by FEMA for reimbursement.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–6472 Filed 4–28–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–KC–P; AA–12581]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

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 will be issued to Chugach Alaska Corporation for lands located in the vicinity of the Prince William Sound, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

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 May 31, 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: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@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 the Bureau of Land Management.

Dina L. Torres,

Land Law Examiner, Branch of Adjudication II (964).

[FR Doc. E6–6495 Filed 4–28–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–KC–P; AA–6706–A, AA–6706–E, AA–6706–F, and AA–6706–A2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

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 will be issued to Twin Hills Native Corporation, for lands in the vicinity of Twin Hills, Alaska, and located in:

Seward Meridian, Alaska

T. 12 S., R. 64 W.,
Secs. 8, 9, and 16;
Secs. 17, 20, and 21.

Containing 2,624.18 acres.

T. 14 S., R. 65 W.,
Secs. 4, 5, and 8;
Secs. 9, 16, and 17;
Secs. 20, 21, and 28;
Sec. 29.

Containing approximately 5,518 acres.

T. 13 S., R. 66 W.,
Sec. 6.

Containing approximately 160 acres.

Total aggregating approximately 8,302 acres.

Notice of the decision will also be published four times in the Anchorage Daily News.

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 May 31, 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: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@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 the Bureau of Land Management.

Eileen Ford,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–6494 Filed 4–28–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–06–1320–EL; COC 69631]

Notice of Invitation for Coal Exploration License Application, CAM-Colorado LLC. COC 69631; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with CAM-Colorado, LLC, in a program for the exploration of unleased coal deposits owned by the United States of America containing approximately 13,646.04 acres in Garfield and Mesa Counties, Colorado.

DATES: Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them by May 31, 2006.

ADDRESSES: Karen Zurek, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and, CAM-Colorado LLC, P.O. Box 98, Loma, Colorado 81524.

FOR FURTHER INFORMATION, CONTACT: Karen Zurek at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC 69631 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado 81506. Any party electing to participate in this program must share all costs on a pro rata basis with CAM-Colorado LLC, and

with any other party or parties who elect to participate.

Karen Zurek,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E6–6491 Filed 4–28–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–06–1320–EL–P; MTM 95451]

Notice of Invitation—Coal Exploration License Application MTM 95451

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Western Energy Company in a program for the exploration of coal deposits owned by the United States of America in lands located in Treasure and Rosebud Counties, Montana, encompassing 548.17 acres.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management (BLM), Montana State Office, Billings, Montana 59101–4669, telephone (406) 896–5084 or (406) 896–5060, respectively.

SUPPLEMENTARY INFORMATION: The lands to be explored for coal deposits are described as follows:

T. 2 N., R. 38 E., P.M.M.
Sec. 14: E½.
T. 1 N., R. 39 E., P.M.M.
Sec. 4: Lots 1, 2, 4.
T. 2 N., R. 39 E., P.M.M.
Sec. 34: W½SW¼

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, BLM, 5001 Southgate Drive, Billings, Montana 59101–4669, and Western Energy Company, P.O. Box 99, Colstrip, Montana 59323. Such written notice must refer to serial number MTM 95451 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the *Independent Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Independent Press*, Forsyth, Montana.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Western Energy Company, is available for public inspection at the BLM, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

Dated: February 16, 2006.

Rebecca Spurgin,

Acting Chief, Branch of Solid Minerals.

[FR Doc. E6–6490 Filed 4–28–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for the Environmental Impact Statement on the Falls Creek Hydroelectric Project and Land Exchange, Glacier Bay National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision for the Environmental Impact Statement on the Falls Creek Hydroelectric Project and Land Exchange, Glacier Bay National Park and Preserve, Alaska.

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Falls Creek Hydroelectric Project and Land Exchange, Glacier Bay National Park and Preserve, Alaska.

This ROD documents the decision by the NPS on behalf of the Secretary of Interior (Secretary) to implement applicable portions of the Glacier Bay National Park Boundary Adjustment Act of 1998 (Pub. L. 105–317) (Act). The Act mandated the Secretary implement specific actions once certain provisions were met. In this ROD the NPS addresses its decision to:

- Exchange land presently in Glacier Bay National Park (Glacier Bay) to the State of Alaska (state);
- Add state land to Klondike Gold Rush National Historical Park (Klondike Gold Rush);
- Designate an island in Blue Mouse Cove and Cenotaph Island in Glacier Bay as wilderness; and
- Adjust national park and wilderness boundaries as necessary to compensate for the land exchange.

By addressing these actions the NPS will fulfill the Department of Interior's responsibility under the Act.

This ROD follows the Federal Energy Regulatory Commission's (FERC) October 29, 2004 decision to issue a license to Gustavus Electric Company allowing the construction and operation of the Falls Creek Hydroelectric Project (FERC No. 11659). It also follows the FERC Order Denying Rehearing on March 24, 2005 and FERC's June 17, 2005 denial of a request to reconsider the March 24, 2005 Order. This record of decision does not address any of FERC's responsibility under the Act nor does it address any aspect of the licensing process and decision as discussed in the final environmental impact statement (final EIS) and the FERC Order Issuing License and the subsequent rehearing denials.

The NPS has decided to adopt the Preferred Alternative as presented in the final EIS. This will result in conveying approximately 1,034 acres in Glacier Bay to the State of Alaska and in exchange receiving approximately 1,040 acres in Klondike Gold Rush. Included is the designation of 1,069 acres in Glacier Bay as wilderness and deletion of 1040 acres of wilderness in Glacier Bay. The National Park and National Wilderness boundaries will be adjusted.

The ROD briefly discusses the Act and background of the hydroelectric project and land exchange, summarizes public involvement during the planning process, states the decision and discusses the basis for it, describes other alternatives considered, specifies the environmentally preferable alternative, identifies measures adopted to minimize potential environmental harm, and provides a non-impairment determination.

ADDRESSES: The ROD can be found online at the *http://www.nps.gov/glba.* Copies of the ROD are available on request from: Bruce Greenwood, National Park Service, Alaska Regional Office, 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3503.

FOR FURTHER INFORMATION CONTACT: Bruce Greenwood, Project Manager, National Park Service, Alaska Region, 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3503.

SUPPLEMENTARY INFORMATION: The NPS prepared a final EIS, as required, under the National Environmental Policy Act of 1969 and Council of Environmental Quality regulations (40 Code of Federal Regulations (CFR) Part 1500).

A Notice of Intent to prepare an environmental impact statement, published in the **Federal Register** on July 5, 2002 (67 FR 129), formally initiated the environmental impact statement (EIS) process. A draft EIS was issued on November 7, 2003 (68 FR 216) for a 60-day public comment period, that ended January 6, 2004. A **Federal Register** notice announcing the availability of the final EIS was

published by the U.S. Environmental Protection Agency on July 9, 2004 (69 FR 41476), commencing the required 30-day no-action period. The final EIS describes and analyzes the environmental impacts of four action alternatives and a no-action alternative.

The NPS has decided to adopt the Preferred Alternative as presented in the final EIS. This will result in conveyance of 1,034 acres to the state of Alaska. The Preferred Alternative is a slight variation of the final EIS Maximum Boundary Alternative. The Maximum Boundary Alternative included the entire 1,145 acres of Glacier Bay park land identified in the Act as potentially available for exchange and the development of a hydroelectric power project. Because 95 acres in the upper portion of the Falls Creek area was not needed for construction of the hydroelectric power project, the Maximum Boundary Alternative was reduced by this amount. To compensate for the 1,034 acres in Glacier Bay that will be exchanged to the state of Alaska, the state of Alaska will transfer to NPS, approximately 1,040 acres of Chilkoot parcels within Klondike Gold Rush. This land will be administered as part of the historical park. Upon completion of the exchange of land under this Act, the Secretary shall adjust, as necessary, the boundaries of Glacier Bay to exclude the land exchanged to the State of Alaska and at Klondike Gold Rush to include the land acquired from the State of Alaska.

In accordance with Section 2(b) of the Boundary Act, to compensate for the 1,034 acres deleted from the National Wilderness Preservation System at Glacier Bay, the unnamed island near Blue Mouse Cove and Cenotaph Island, totaling 1,069 acres, will be designated as wilderness. The wilderness boundaries in the Falls Creek, Blue Mouse Cove, and Cenotaph Island areas will be adjusted accordingly.

Dated: March 21, 2006.

Marcia Blaszak,

Regional Director, Alaska.

[FR Doc. E6–6485 Filed 4–28–06; 8:45 am]

BILLING CODE 4312–HX–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

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 American Museum of Natural History, New York, NY. The human remains were collected from Morton and Oliver Counties, ND, and Hughes County, SD.

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 American Museum of Natural History professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Prior to 1877, human remains representing a minimum of one individual were collected from a village site, Fort Lincoln, Morton County, ND, on the Missouri River. The human remains were collected by an unknown person. It is unclear how the museum received the remains. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on museum documentation that describes the remains as ''Hidatsa?'' The human remains have not been dated, but originated from an area occupied during the early postcontact period by the Mandan people, who are now part of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Given the description of their geographic origin, the human remains may have come from On-a-Slant Village, a Mandan settlement abandoned in 1781.

In 1916, human remains representing a minimum of one individual were collected from Old Fort Clark in Oliver County, ND, by Rev. Gilbert L. Wilson. The American Museum of Natural History purchased the human remains from Rev. Wilson in 1917. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on geographic origin. The location of the human remains is consistent with the postcontact territory of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. In 1827, most of the Arikara and some of the Mandan people settled near Fort Clark. An Arikara cemetery is present at Fort Clark. Based on the association of the human remains with historic Fort Clark, the remains are most likely postcontact.

In 1939, human remains representing a minimum of six individuals were collected from the Arzberger site, Hughes County, SD, by Columbia University. The American Museum of Natural History acquired the human remains as a gift from Columbia University in 1964. No known individuals were identified. No associated funerary objects are present.

The individuals have been identified as Native American based on geographic origin, mortuary practices, and catalog records. The catalog indicates the remains are ''probably Arikara.'' Flexed inhumations on elevated land forms immediately outside villages are consistent with late precontact and postcontact Arikara mortuary practices.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the American Museum of Natural History 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 Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before May 31, 2006. Repatriation of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: March 24, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 06–4047 Filed 4–28–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

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 American Museum of Natural History, New York, NY. The human remains were collected from Sioux County, ND.

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 American Museum of Natural History professional staff in consultation with representatives of 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.

In 1885, human remains representing a minimum of one individual were collected from Fort Yates, Standing Rock Indian Reservation, Sioux County, ND, by Mr. DeCost Smith. In 1902, the American Museum of Natural History acquired the human remains as a gift from Mr. Smith. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on museum documentation that describes the human remains as ''Dakota.'' The human remains were collected from the Standing Rock Reservation, which is inhabited by Standing Rock Sioux Indians.

Although the lands from which the human remains were collected are currently under the jurisdiction of the U.S. Department of the Interior, Bureau of Indian Affairs, the American Museum of Natural History has control of the human remains since their removal from tribal land predates the permit requirements established by the Antiquities Act of 1906.

Officials of the American Museum of Natural History 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 American Museum of Natural History 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 Standing Rock Sioux Tribe of North & South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before May 31, 2006. Repatriation of the human remains to the Standing Rock Sioux Tribe of North & South Dakota may proceed after that date if no additional claimants come forward.

The American Museum of Natural History 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: March 29, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–6484 Filed 4–28–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Sheboygan County Historical Museum, Sheboygan, WI

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 Sheboygan County Historical Museum, Sheboygan, WI. The human remains were removed from Sheboygan County, WI.

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 Sheboygan County Historical Museum professional staff in consultation with representatives of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Menominee Indian Tribe of Wisconsin; and Prairie Band of Potawatomi Nation, Kansas.

In 1938, human remains representing a minimum of one individual were removed from the Sheboygan Marsh in Sheboygan County, WI, during the building of the Sheboygan dam, a Works Progress Administration project. The human remains were kept in private possession until they were donated by Mr. Charles Luksis of Sheboygan, WI, to the Sheboygan County Historical Museum in 1985. It is unknown if Mr. Luksis was the collector. No known individual was identified. No associated funerary objects are present.

The human remains are assumed to be of Native American ancestry because of the presence of other Native American sites, including a mound, in the immediate vicinity of the Sheboygan dam where the human remains were most likely recovered. There are no known historic or European burials in the area. The Sheboygan County Historical Museum has determined that the human remains are likely culturally affiliated with the Hannahville Indian Community, Michigan based on judicially established land areas of the Indian Claims Commission 1978. Finally, oral history and historic accounts of the presence of the tribe in the area by the tribal representative, independently verified by the staff of the Sheboygan County Historical Museum and the Sheboygan County Historical Research Center, also support the cultural affiliation to the Hannahville Indian Community, Michigan.

On an unknown date, human remains representing a minimum of four individuals were removed from the Kraemer property in the Town of Rhine, Sheboygan County, WI, by an unknown person. The human remains were taken to the Sheboygan County Historical Museum and donated to the collection on February 11, 1936, by Mr. Charles E. Broughton, President of the Sheboygan County Historical Society. No known individuals were identified. No associated funerary objects are present.

According to museum records, the human remains were excavated from a mound, which indicates that the human remains are Native American in origin. The Sheboygan County Historical Museum has determined that the human remains are most likely culturally affiliated with the Hannahville Indian Community, Michigan, based on an Indian Claims Commission decision (Land Claims Map ID # 15). Furthermore, historic accounts of the presence of the tribe in the area by the tribal representative, independently verified by the staff of the Sheboygan County Historical Museum and the Sheboygan County Historical Research Center, also support the cultural affiliation to the Hannahville Indian Community, Michigan.

Officials of the Sheboygan County Historical Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the Sheboygan County Historical 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 Hannahville Indian Community, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Casandra Karl, Registrar, Sheboygan County Historical Museum, 3110 Erie Avenue, Sheboygan, WI 53081, telephone (920) 458–1103, before May 31, 2006. Repatriation of the human remains to the Hannahville Indian Community, Michigan may proceed after that date if no additional claimants come forward.

The Sheboygan County Historical Museum is responsible for notifying the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Menominee Indian Tribe of Wisconsin; and Prairie Band of Potawatomi Nation, Kansas that this notice has been published.

Dated: March 22, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 06–4048 Filed 4–28–06; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA–702 (Second Review)]

Ferrovanadium and Nitrided Vanadium from Russia

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

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 ferrovanadium and nitrided vanadium from Russia 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 June 20, 2006. Comments on the adequacy of responses may be filed with the Commission by July 14, 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).

DATES: *Effective Date:* May 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 July 10, 1995, the Department of Commerce issued an antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia (60 FR 35550). Following five-year reviews by Commerce and the Commission, effective June 7, 2001, Commerce issued a continuation of the antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia (66 FR 30694). 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] 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. 06–5–152, 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.

(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 Russia.

(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 one *Domestic Like Product* including both ferrovanadium and nitrided vanadium. Noting in its full five-year review determination that nitrided vanadium had not been produced in the United States since 1992, the Commission determined that, based on the record, the product most like ferrovanadium and most similar in characteristics and uses to nitrided vanadium that was produced in the United States at that time was ferrovanadium. Accordingly, the Commission found one *Domestic Like Product* consisting of ferrovanadium. One Commissioner defined the *Domestic Like Product* differently in the first five-year review determination.

(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 one *Domestic Industry* consisting of ferrovanadium and nitrided vanadium producers, including certain toll-producers. In its full five-year review determination, the Commission found one *Domestic Industry* consisting of ferrovanadium producers, including a toll-producer of the *Domestic Like Product.* The Commission, however, did not include tollees Gulf and USV in the *Domestic Industry* because those firms produced vanadium pentoxide, an intermediate product, not ferrovanadium, the *Domestic Like Product.* Two Commissioners defined the *Domestic Industry* differently in the first five-year review determination.

(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 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 June 20, 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 July 14, 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 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 calendar year 2005 (report quantity data in pounds of contained vanadium 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 Country,* provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds of contained vanadium 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. port, 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. port, 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 (report quantity data in pounds of contained vanadium 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 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 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: 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.

Issued: April 24, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–6361 Filed 4–28–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Reinstatement, without Change of a previously approved collection for which Approvals has expired. Budget Detail Worksheet.

The Department of Justice (DOJ), Office of Justice Programs (OJP) 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 collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 24, page 6096 on February 6, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 31, 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 and 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) 395–5806. 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, without Change of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Budget Detail Worksheet

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms: Not-applicable

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: All potential grantee partners who are possible recipient of our discretionary grant programs. The eligible recipients include state and local government, Indian tribes, profit entities, non-profit entities, educational institutions, and individuals. The form is not mandatory and is recommended as guide to assist the recipient in preparing the budget narrative as authorized in 28 CFR parts 66 and 70.

(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 2,500 respondents will complete a 4-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden hours associated with this collection is 4,609 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 24, 2006

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 06–4060 Filed 4–28–06; 8:45am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 19, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov.* These documents can also be accessed online at: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Standard Job Corps Request for Proposal and Related Contractor Information Gathering.

OMB Number: 1205–0219.

Frequency: Annually; quarterly; monthly; and weekly.

Affected Public: Business or other for-profit; not-for profit institutions; Federal Government; State, Local, or Tribal gov't.

Type of Response: Recordkeeping and reporting.

Number of Respondents: 122.

Annual Responses: 232,212.

Average Response time: 4 hours 11 minutes.

Total Annual Burden Hours: 62,525.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Standard Request for Proposal for the operation of a Job Corps Center completed by prospective contractors for competitive procurement and Federal paperwork requirements for contract operators of such centers.

Ira L. Mills,

Departmental Clearance Officer, Team Leader.

[FR Doc. E6–6513 Filed 4–28–06; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34437]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for DGI Biotechnologies, LLC's Facility in Edison, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Joseph Nick, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5056, fax (610) 337–5269; or by e-mail: *JLN@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to DGI Biotechnologies, LLC (DGI) for Materials License No. 29–30389–01, to authorize release of its facility in Edison, New Jersey for unrestricted use and terminate the license. NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Edison, New Jersey facility for unrestricted use and terminate the license. DGI was authorized by NRC from 1997 to use radioactive materials for research and development purposes at the site. In 2003, DGI ceased operations with licensed materials at the Edison site and the DGI facility was taken over by Antyra, Inc. (Antyra). On September 28, 2005, Antyra requested that NRC release the facility for unrestricted use. Antyra has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted release.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Antyra. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Antyra's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment Related to Issuance of a License Amendment of U.S. Nuclear Regulatory Commission Materials License No. 29–30389–01, DGI Biotechnologies, LLC in Edison, New Jesey (ML061070474); and Final Status Survey Results for DGI Biotechnologies, LLC Facility, 40 Talmadge Road, Edison, New Jersey (ML052840126). 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.*

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html.*

Dated at King of Prussia, Pennsylvania this 20th day of April, 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E6–6505 Filed 4–28–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee Meetings.

SUMMARY: The Office of Management and Budget announces five meetings of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There are five meetings announced in this **Federal Register** Notice. Public meetings of the Panel will be held on May 18th, May 31st, June 14th, July 7th and July 21st 2006. All meetings will begin at 9 a.m. Eastern Time and end no later than 5 p.m.

ADDRESSES: Except for the July 7th meeting, all public meetings will be held at the Small Business Administration (SBA), 409 Third Street, SW., Washington, DC, 2nd Floor Eisenhower Conference Room (Metro stop at building: Federal Center Southwest, Orange or Blue Lines). The July 7th meeting will be held at the new FDIC Building, 3501 N. Fairfax Drive, Arlington, VA 22226, Room 203. This facility is a quarter of a block off of the Orange Line metro stop for Virginia Square. The public must pre-register

one week in advance for all meetings due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning these meetings or the Panel itself, or to pre-register for the meetings, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Mr. Emile Monette, AAP Staff Analyst, in writing at: *emile.monette@gsa.gov* or by Fax at 202–501–3341, or mail at the address given above for the DFO. Requests must be received no later than one week prior to the meeting for which speaking time is desired.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at the meetings. Any change will be announced in the **Federal Register**.

All Meetings—While the Panel may hear from additional invited speakers, the focus of these meetings will be discussions of and voting on working group findings and recommendations from selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://acquisition.gov/comp/aap/index.html* for a list of working groups). The Panel welcomes oral public comments at these meetings and has reserved one-half hour for this purpose at each meeting. Members of the public wishing to address the Panel during the meeting must contact Mr. Monette, in writing, as soon as possible to reserve time (see contact information above).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at *http://acquisition.gov/comp/aap/index.html* under the link for ''Working Group Reports.'' The most recent posting is from the Commercial Practices Working Group. The public is encouraged to submit written comments on any and all draft reports.

(c) *Adopted Recommendations:* The Panel has adopted recommendations presented by the Small Business, Interagency Contracting, and Performance-Based Acquisition Working Groups as of the date of this notice. While additional recommendations from some of these working groups are likely and adopted recommendations from other working groups will be posted as recommendations are adopted, the public is encouraged to review and comment on the recommendations adopted by the Panel to date by going to *http://acquisition.gov/comp/aap/index.html* and selecting the link for ''Panel Recommendations To Date.''

(d) *Availability of Meeting Materials:* Please see the Panel's Web site for any available materials, including draft agendas and minutes. Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Revised Commercial Practices Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel.

(e) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Oral Comments: Speaking times will be confirmed by Panel staff on a ''first-come/first-served'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Mr. Emile Monette, in writing (via mail, e-mail, or fax identified above for Mr. Monette) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and/or presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Mr. Monette one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format).

Please note: Because the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(f) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 06–4070 Filed 4–28–06; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of Closure of Case 012–CP–05, Protection of Worker Rights in Swaziland and Closure of Case 015–CP–05, Protection of Intellectual Property in Kazakhstan, in the 2005 Annual Country Practice Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces closure of the review for cases 012–CP–05, Protection of Worker Rights in Swaziland and 015–CP–05, Protection of Intellectual Property in Kazakhstan.

FOR FURTHER INFORMATION, CONTACT: Marideth Sandler, Executive Director of the GSP Program, Office of the United States Trade Representative (USTR), Room F–220, 1724 F Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''Trade Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the 2005 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) is reviewing petitions concerning the country practices of certain beneficiary developing countries of the GSP program. As a result of that review, the TPSC has decided to close the review for case 012–CP–05 regarding protection of worker rights in Swaziland and case 015–CP–05, protection of intellectual property rights in Kazakhstan. The Petitioners were the AFL–CIO and the International Intellectual Property Alliance (IIPA), respectively. The results of other ongoing country practice reviews in the 2005 Annual Review will be announced in the **Federal Register** at a later date.

Marideth J. Sandler,

Executive Director, GSP Program.

[FR Doc. E6–6536 Filed 4–28–06; 8:45 am]

BILLING CODE 3190–W6–P

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Notice of modification to the Department of Commerce Personnel Management Demonstration Project.

SUMMARY: The Office of Personnel Management (OPM) has authority to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in policies and procedures result in improved Federal human resources management. OPM approved a demonstration project covering several operating units of the U.S. Department of Commerce (DoC). OPM must approve modifications to demonstration project plans. This notice rescinds the demonstration project's independent authority pertaining to recruitment and retention payments. By so doing, it allows the demonstration project to take advantage of the expanded recruitment and retention flexibilities applicable to General Schedule and other employees.

DATES: This notice modifying the DoC Demonstration Project may be implemented upon publication.

FOR FURTHER INFORMATION CONTACT: Department of Commerce:

Joan Jorgenson, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 5004, Washington, DC 20230, (202) 482–4233. Office of Personnel Management: Jill Rajaee, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–0836.

SUPPLEMENTARY INFORMATION:

1. Background

The Office of Personnel Management (OPM) approved the Department of Commerce (DOC) Demonstration Project and published the final plan in the **Federal Register** Volume 62, Number 247, Part II, on Wednesday, December 24, 1997. The project was implemented on March 29, 1998, and modified in the **Federal Register** on Thursday, September 30, 1999, Volume 64, Number 189 [Notices] [Pages 52810–52812], and on Tuesday, August 12, 2003, Volume 68, Number 155 [Notices] [Pages 47948–47949]. OPM approved a request to extend the DOC Demonstration Project for five years as stated in an administrative letter from OPM, dated February 14, 2003. The project was approved for expansion in the **Federal Register** Volume 68, Number 180 [Notices] [Pages 54505–54507], on Wednesday, September 17, 2003, to include an additional 1,505 employees. The demonstration project was again modified on Tuesday, July 5, 2005, Volume 70, Number 127 [Notices] [Pages 38732–38733]. This notice rescinds the demonstration project's independent authority pertaining to recruitment and retention payments. By so doing, it allows the demonstration project to take advantage of the expanded recruitment and retention flexibilities under 5 U.S.C. 5753 and 5754, and subparts A and C of 5 CFR part 575.

Authority: 5 U.S.C. 4703; 5 CFR 470.315

Office of Personnel Management.

Linda M. Springer,

Director.

Table of Contents

I. Executive Summary
II. Basis for Project Plan Modification
III. Changes to the Project Plan

I. Executive Summary

The Department of Commerce (DOC) Demonstration Project utilizes many features similar to those implemented by the National Institute of Standards and Technology (NIST) Demonstration Project in 1988. The DOC Demonstration Project supports several key objectives: To simplify the classification system for greater flexibility in classifying work and paying employees; to establish a performance management and rewards system for improving individual and organizational performance; and to improve recruitment and retention to attract highly qualified candidates. The project is designed to test whether the interventions of the NIST project, which is now a permanent alternative personnel system, could be successful in other DOC environments. The current participating organizations include the Office of the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), the Technology Administration, the Bureau of Economic Analysis, the Institute for Telecommunication Sciences, and units of the National Oceanic and Atmospheric Administration: Office of Oceanic and Atmospheric Research, National Marine Fisheries Service, and the National Environmental Satellite, Data, and Information Service.

II. Basis for Project Plan Modification

As part of the Commerce Demonstration Project plan, as published in the **Federal Register** notice (62 FR 67434), the recruitment bonus and retention allowance authorities under 5 U.S.C. 5753 and 5754, and subparts A and C of 5 CFR part 575, were waived for the DOC Demonstration Project and replaced with an independent authority to pay recruitment and retention payments. Based on independent evaluations, the recruitment and retention payment flexibilities have been underutilized in the demonstration project. The changes in statute made by section 101 of the Federal Workforce Flexibility Act of 2004 (Pub. L. 108–411, October 30, 2004) provide robust recruitment and retention incentives in an effort to

address challenges such as labor market competition and skill gap issues. However, because of the previous waivers, the demonstration project is precluded from taking advantage of these tools to address recruitment and retention concerns. This notice removes the demonstration project's independent authority to pay recruitment and retention payments, thereby allowing the project to use the recruitment and retention incentive authorities in 5 U.S.C. 5753 and 5754, and subparts A and C of 5 CFR part 575. This will provide managers in the demonstration project the same flexibilities now available to General Schedule and other employees under title 5. The demonstration project needs to be able to take advantage of legislative changes to title 5 when appropriate. It should be noted that since the demonstration project did not waive 5 U.S.C. 5753 or subpart B of 5 CFR part 575 pertaining to relocation bonuses, the demonstration project could use the relocation incentive flexibilities provided by the Federal Workforce Flexibility Act of 2004 and implementing regulations prior to this notice. This notice continues to allow the demonstration project to use the title 5 relocation incentive authority.

III. Changes to the Project Plan

This notice modifies the Commerce demonstration plan by rescinding its independent authority related to recruitment and retention payments, thereby providing authority to use recruitment and retention incentive authorities under 5 U.S.C. 5753 and 5754, and subparts A and C of 5 CFR part 575. The following discussion refers readers to the substantive changes to the project plan. The following page numbers refer to the pages in the final plan, published in the **Federal Register** on December 24, 1997.

(1) Page 67451: Remove Paragraph B.12, ''Recruitment and Retention Payments,'' and renumber Paragraphs B.13, ''Travel Expenses,'' and B.14, ''Promotion,'' as Paragraphs B.12 and B.13, respectively.

(2) Page 67463: In section X, ''Authorities and Waiver of Laws and Regulations Required,'' remove the following waivers:

—''5 U.S.C. 5753–5754 Recruitment and relocation bonuses; Retention allowances (except that relocation bonuses under Section 5753 continue to apply),''

—''Part 575, Subpart A, Recruitment bonuses,'' and

—''Part 575, Subpart C, Retention allowances.''

(3) Page 67463: In section X, ''Authorities and Waiver of Laws and Regulations Required,'' add the following new waivers:

—Before the waiver for ''Section 7512(3),'' insert ''Section 5753 and 5754 Recruitment, Relocation and Retention Incentives. This waiver applies only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule or the SL/ST pay plan.''

—Before the waiver for ''Section 752.401(a)(3),'' insert ''Part 575, Subparts A, B and C, Recruitment, Relocation and Retention Incentives. This waiver applies only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule or the SL/ST pay plan.''

[FR Doc. 06–4049 Filed 4–28–06; 8:45 am]

BILLING CODE 6325–43–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27292; 812–13214]

Frank Russell Investment Company, et al.; Notice of Application

April 25, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Frank Russell Investment Company and Russell Investment Funds (each, a ''Trust'' and collectively, the ''Trusts''), and Frank Russell Investment Management Company (''FRIMCo'').

FILING DATES: The application was filed on July 19, 2005 and amended on April 13, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application 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 May 22, 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, 20549–1090. Applicants, c/o Gregory J. Lyons, Esq., Frank Russell Company, 909 A Street, Tacoma, Washington 98402.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 551–6813 or Mary Kay Frech, Branch Chief, 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).

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. Frank Russell Investment Company consists of 34 separate series (''Funds'') and Russell Investment Funds consists of 5 separate Funds. FRIMCo, a Washington corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser to each Fund.[1] An existing Commission order permits the Funds to invest uninvested cash balances in money market Funds that comply with rule 2a–7 under the Act.[2]

2. Some Funds may lend money to banks or other entities by entering into

[1] All entities that currently intend to rely on the requested relief have been named as applicants.

[2] Frank Russell Investment Company, Investment Company Act Release Nos. 25416 (February 12, 2002) (notice) and 25458 (March 12, 2002) (order).

repurchase agreements or purchasing other short-term investments. Other Funds may borrow money from the same or similar banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have entered into a credit agreement with a bank. If a Fund were to borrow money under the credit agreement, it would pay interest on the loan at a rate that is significantly higher than the rate that is earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the loan under the credit agreement. Applicants state that this differential represents the profit the bank would earn on loans under the credit agreement and is not attributable to any material difference in the credit quality or risk of such transactions.

3. Applicants request an order that would permit the Funds to enter into interfund lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher interest rates on short-term investments. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks.

4. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests which normally are effected immediately, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

5. Applicants also propose using the credit facility when a sale of securities ''fails'' due to circumstances such as a delay in the delivery of cash to a Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if a Fund has undertaken to purchase securities using the proceeds from the securities sold. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity.

6. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a money market Fund. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

7. The interest rate charged to a Fund on any Interfund Loan (''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate on any day would be the highest rate available to the Funds from investing in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by FRIMCo each day an Interfund Loan is made according to a formula established by a Fund's board of trustees (''Board'') intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The Board of each Fund would periodically review the continuing appropriateness of using the publicly available rate to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

8. The credit facility would be administered by FRIMCo's fund accounting department, an investment professional within FRIMCo who serves as a portfolio manager of money market Funds and a compliance professional within FRIMCo (collectively, the ''Credit Facility Team''). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers other than the money market Fund portfolio manager on the Credit Facility Team. Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require the approval of at least one member of the Credit Facility Team who is not a money market Fund portfolio manager. After the Credit Facility Team has allocated cash for Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds. The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

9. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

10. FRIMCo would (a) monitor the Interfund Loan Rate and the other terms and conditions of the loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board of each Fund concerning any transactions by

the Funds under the credit facility and the Interfund Loan Rate charged.

11. FRIMCo, through the Credit Facility Team, would administer the credit facility under its existing management, advisory, or administrative contract with each Fund and would receive no additional compensation for its services. FRIMCo may collect fees in connection with repurchase and lending transactions generally, including transactions through the credit facility, for pricing and record keeping, bookkeeping and accounting services. These fees would be no higher than those applicable for comparable bank loan transactions.

12. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material facts concerning the credit facility in its prospectus and/or statement of additional information (''SAI''); and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents.

13. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) under section 17(d) and rule 17d-1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having FRIMCo as their common investment adviser and having a common Board and officers.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) FRIMCo, through the Credit Facility Team, would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a money market Fund; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other terms and conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or shareholders, and that FRIMCo will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting

any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1(b) provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by an unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (a) More favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any money market Fund in which the lending Fund could otherwise invest; and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund: (a) Will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the proposed credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the proposed credit facility only on a secured basis. A Fund may not borrow through the proposed credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the proposed credit facility if the loan would cause its aggregate outstanding loans through the proposed credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. The Fund's borrowings through the proposed credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the proposed credit facility must be consistent with its investment objectives, and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the proposed credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds (other than the money market Fund portfolio manager acting in his or her capacity as a member of the Credit Facility Team). All allocations will require the approval of at least one member of the Credit Facility Team who is not the money market Fund portfolio manager. The Credit Facility Team will not solicit cash for the proposed credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the money market Fund portfolio manager on the Credit Facility Team has access to loan demand data). The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the

standing instructions of the portfolio managers or return remaining amounts for investment directly by the portfolio managers of the Funds.

13. FRIMCo will monitor the Interfund Loan Rate and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees of each Trust concerning the participation of the Funds in the proposed credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Board of each Trust, including a majority of the Independent Trustees, will:

(a) Review, no less frequently than quarterly, each Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) Establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) Review, no less frequently than annually, the continuing appropriateness of each Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, FRIMCo will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time on overnight repurchase agreements and commercial bank borrowings, the yield of any money market Fund in which the lending Fund could otherwise invest, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. FRIMCo will prepare and submit to the Board for review an initial report describing the operations of the proposed credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the proposed credit facility, FRIMCo will report on the operations of the proposed credit facility at the Board's quarterly meetings.

In addition, for two years following the commencement of the proposed credit facility, the independent auditors for each Trust shall prepare an annual report that evaluates FRIMCo's assertion that it has established procedures reasonably designed to achieve compliance with the terms and conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N–SAR, as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Repo Rate, and, if applicable, the yield of the money market Funds, but lower than the Bank Loan Rate;

(b) Compliance with the collateral requirements as set forth in the application;

(c) Compliance with the percentage limitations on interfund borrowing and lending;

(d) Allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and

(e) That the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, each Trust's independent auditors, in connection with their audit examinations of the Funds, will continue to review the operation of the proposed credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or SAI all material facts about its intended participation.

19. The Board of each Trust will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–6481 Filed 4–28–06; 8:45 am]

BILLING CODE 8010–01–P

[3] If the dispute involves Funds with different Trustees, the respective Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 1, 2006:

A closed meeting will be held on Thursday, May 4, 2006 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, May 4, 2006 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Resolution of litigation claims.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: April 26, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–4099 Filed 4–26–06; 4:06 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53702; File No. SR-NSX–2005–09]

Self-Regulatory Organizations; National Stock Exchange; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 Thereto to Amend Exchange Delisting Rules to Conform to Recent Amendments to Commission Rules Regarding Removal from Listing and Withdrawal from Registration

April 21, 2006.

I. Introduction

On October 24, 2005, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange delisting rules to conform to recent amendments to Commission rules regarding removal from listing and withdrawal from registration. The proposed rule change was published for comment in the **Federal Register** on March 22, 2006.[3] No comments were received regarding the proposal. On March 23, 2006, NSX filed Amendment No. 1 to the proposed rule change.[4] On April 12, 2006, NSX filed Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, publishes notice of Amendment Nos. 1 and 2 to the proposed rule change, and grants accelerated approval to Amendment Nos. 1 and 2.

II. Description of the Proposed Rule Change

Section 12 of the Act [6] and SEC Rule 12d2–2 govern the process for the delisting and deregistration of securities listed on national securities exchanges. Recent amendments to SEC Rule 12d2–2 (''amended SEC Rule 12d2–2'') and other Commission rules require the electronic filing of revised Form 25 [7] on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system by exchanges and issuers for all delistings, other than delistings of standardized options and securities futures, which are exempted.[8]

In the case of exchange-initiated delistings, amended SEC Rule 12d2–2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for:

(i) Notice to the issuer of the exchange's decision to delist its securities;

(ii) An opportunity for appeal to the exchange's board of directors, or to a committee designated by the board; and

(iii) Public notice of the national securities exchange's final determination to remove the security from listing and/or registration, by issuing a press release and posting notice on its Web site. Public notice must be disseminated no fewer than 10 days before the delisting becomes effective pursuant to amended SEC Rule 12d2–2(d)(1), and must remain posted on its Web site until the delisting is effective.

The Exchange's current provisions with respect to the delisting of securities are contained in Article IV, Section 3 of the NSX Bylaws. The Exchange proposes to amend Section 3.1(b) of the Bylaws to comply with new requirements set forth in amended SEC Rule 12d2–2(b). The provisions set forth in current Section 3 of the Bylaws, which provide for notification to the issuer in the event that the Exchange determines to delist the issuer's securities and the right to appeal the Exchange's determination, satisfy the minimum provisions set forth in amended SEC Rule 12d2–2(b)(1)(i)-(ii). NSX rules do not currently provide for public notice of the delisting, as mandated by amended SEC Rule 12d2–2(b)(1)(iii). Therefore, proposed Section 3.1(b) of the Bylaws would require the Exchange to provide public notice, in accordance with amended SEC Rule 12d2–2(b)(1)(iii), of a final determination by the Exchange to strike an issuer's securities from listing and/or withdraw the registration of such securities on the Exchange.

The criteria the Exchange would employ for issuers that desire to delist their security from the Exchange are contained in Section 3.2 of the NSX Bylaws. Currently, Section 3.2 of the NSX Bylaws requires that an issuer seeking to voluntarily delist its security submit a certified copy of the issuer's board resolution authorizing withdrawal from listing and registration and a statement of the reasons for the withdrawal and supporting facts. NSX is retaining these provisions. The Exchange proposes to amend Section 3.2 of the NSX Bylaws to add new requirements that an issuer certify that it is in compliance with the Exchange's rules for delisting and applicable state law (in conformity with amended SEC Rule 12d2–2(c)(2)(i)) and certify that the issuer is in compliance with the public notice requirements under amended SEC Rule 12d2–2(c)(2)(iii). The proposed rule filing sets forth a new requirement separate from those set forth in amended SEC Rule 12d2–2(c) that would require the issuer to notify the Exchange in writing that it has filed Form 25 with the SEC simultaneously with such filing. Such notification would include the date the issuer expects the delisting to become effective. In addition, NSX proposes to amend Section 3.2 of the Bylaws to add provisions requiring the issuer to submit written notice that is in conformity with the requirements of amended SEC Rule 12d2–2(c)(2)(ii) to the Exchange no fewer than ten days before the issuer files its application to delist with the Commission and another notice when such application becomes effective. The proposal would also eliminate the provision in Section 3.2 of the NSX Bylaws that requires the issuer to submit the proposed voluntary delisting of its security to the security holders for their vote in a meeting for which proxies are submitted.

The Exchange also proposes in Interpretations and Policies .01 to new Section 3.2A to the NSX Bylaws to require any issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to Section 3.2A that has received notice from the Exchange, pursuant to Section 3.1A or otherwise, that it is below the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 53508 (March 17, 2006), 71 FR 14562.

[4] In Amendment No. 1, NSX added an interpretation and policy to Section 3.2A to Article IV of the NSX Bylaws to: (i) Clarify the effective date of the proposal; (ii) clarify the use of Form 25 as a delisting application; and (iii) state that an issuer that is below the continued listing policies and standards of the Exchange and seeks to voluntarily apply to withdraw a class of securities from listing must disclose that it is no longer eligible for continued listing in its statement of material facts relating to the reason for withdrawal from listing, its public press release, and its Web site notice.

[5] In Amendment No. 2, NSX made technical changes to its Form 19b–4, Exhibit 1, and Exhibits that clarify the changes proposed in Amendment No. 1.

[6] 15 U.S.C. 78l.

[7] 17 CFR 249.25.

[8] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005) (''SEC Rule 12d2–2 Approval Order'').

Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts (pursuant to Section 3.2A(d)) relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule12d2–2(c)(2)(ii) under the Act and; (ii) its public press release and web site notice required by amended SEC Rule 12d2–2(c)(2)(iii) under the Act.[9]

Finally, the Exchange has made changes in its rules to clarify that the Form 25 serves as the application to remove a security from listing and/or registration and to specify that the proposed changes will be effective as of April 24, 2006 as required by amended SEC Rule 12d2–2.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [10] and, in particular, the requirements of Section 6 of the Act.[11] Specifically, as discussed below, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,[12] which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, as noted in more detail below, the changes being adopted by the NSX meet the requirements of amended SEC Rule 12d2–2.

A. Exchange Delisting

Amended SEC Rule 12d2–2(b) states that a national securities exchange may file an application on Form 25 to strike a class of securities from listing and/or withdraw the registration of such securities, in accordance with its rules, if the rules of such exchange, at a minimum, provide for notice to the issuer of the exchange's decision to delist, opportunity for appeal, and public notice of the exchange's final determination to delist. The Commission believes that NSX's current rules and proposal comply with the dictates of amended SEC Rule 12d2–2(b).

NSX rules currently provide the requisite issuer notice as well as an opportunity to appeal such action by following Chapter X of the Exchange Rules governing adverse actions.[13] Specifically, a person who is or will be aggrieved by any action of the Exchange can submit an application for hearing and review to the Secretary of the Exchange, who promptly forwards such request to the Appeals Committee.[14] The decision of the Appeals Committee is subject to further review by the Board of Directors upon its own motion or upon written request by the aggrieved party.[15] Finally, the proposed rule change will provide for public notice of the Exchange's final determination to remove the security from listing and/or registration. This should ensure that investors have adequate notice of an exchange delisting and is consistent with the protection of investors under Section 6(b)(5) of the Act.[16]

B. Issuer Voluntary Delisting

The Exchange proposes to set forth in its Exchange rules the general requirements of amended SEC Rule 12d2–2(c) regarding issuer voluntary delisting. In addition, new Section 3.2 of the NSX Bylaws would require the issuer to certify its compliance with Exchange rules for delisting and other applicable laws. Further, the Commission notes that NSX also proposes to amend Section 3.2 of the Bylaws to conform to amended SEC Rule 12d2–2(c) which requires issuers to notify the Exchange in case it elects to delist its securities from the Exchange, and upon such notification, the Exchange would be required to issue a public notice of such determination. The Commission believes that these provisions will inform issuers of the requirements for voluntary delisting of their securities under Exchange rules and federal securities laws and ensure the Exchange and shareholders are adequately notified of an issuer delisting.

The proposal also sets forth a new requirement not in amended SEC Rule 12d2–2 that would require an issuer seeking to voluntarily delist its security to notify the Exchange in writing that it has filed Form 25 with the Commission simultaneously with such filing. The issuer would also be required to notify the Exchange in writing immediately after the delisting actually becomes effective. The Commission believes that this requirement will allow the Exchange to be fully informed of the filing of a Form 25 and be prepared to take timely action to delist the security in accordance with the filing of the Form.

The Exchange also proposes to add an interpretation and policy to Section 3.2A to the Bylaws to require any issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to Section 3.2A that has received notice from the Exchange, pursuant to Section 3.1A or otherwise, that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) Its statement of all material facts (pursuant to Section 3.2A (d)) relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by amended SEC Rule 12d2–2(c)(2)(ii) under the Act and; (ii) its public press release and web site notice required by amended SEC Rule 12d2–2(c)(2)(iii) under the Act.[17] The Commission believes that this requirement will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. Issuers will therefore not be permitted to delist voluntarily without public disclosure of their noncompliance with Exchange listing standards.

C. Accelerated Approval of Amendment Nos. 1 and 2

Pursuant to Section 19(b)(2) of the Act,[18] the Commission may not approve

[9] *See* Amendment No. 1, *supra* note 4.

[10] 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).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Section 3.1 of the NSX By-Laws.

[14] NSX Rule 10.3.

[15] NSX Rule 10.5.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Amendment No. 1, *supra* note 4.

[18] 15 U.S.C. 78s(b)(2).

any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving Amendment Nos. 1 and 2 to the proposal, prior to the 30th day after publishing notice of Amendment Nos. 1 and 2 in the **Federal Register**.

As previously discussed, the revisions made to the proposal in Amendment No. 1 [19] will allow shareholders to be informed and aware that the issuer has failed to meet Exchange listing standards and is voluntarily delisting with the consent of the Exchange. The other revisions in Amendment No. 1 are clarifications. In Amendment No. 2, the Exchange made technical changes that clarify the revisions set forth in Amendment No. 1. The Commission believes that granting accelerated approval of Amendment Nos. 1 and 2 will permit the Exchange to implement these new provisions as expeditiously as possible, to the benefit of investors. Further, no comments were received on the original proposal, as published.[20] The Commission also believes that accelerating approval of Amendment Nos. 1 and 2 is appropriate because these revisions do not raise new regulatory issues.

Accordingly, pursuant to Section 19(b)(2) of the Act,[21] the Commission finds good cause to approve Amendment Nos. 1 and 2 prior to the thirtieth day after notice of Amendment Nos. 1 and 2 are published in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 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–NSX–2005–09 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2005–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2005–09 and should be submitted on or before May 22, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–NSX–2005–09) is approved, and Amendment Nos. 1 and 2 to the proposed rule change are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–6503 Filed 4–28–06; 8:45 am]

BILLING CODE 8010–01–P

[19] *See* Amendment No. 1, *supra* note 4 and Section III.B herein.

[20] *See* Securities Exchange Act Release No. 53508, *supra* note 3.

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Venturi Wireless, Inc., Sunnyvale Research Plaza, 555 N. Mathilda Avenue, Suite 100, Sunnyvale, California 94085. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizons Ventures Fund I, L.P. and Horizons Ventures Advisors Fund I, L.P., all Associates of Horizon Ventures Fund II, L.P., own more than ten percent of Venturi Wireless, Inc., and therefore Venturi Wireless, Inc. is considered an Associate of Horizon Ventures Fund II as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: April 3, 2006.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E6–6488 Filed 4–28–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought

an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Invivodata, Inc. 2100 Wharton Street, Suite 505, Pittsburgh, Pennsylvania 15203. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizons Ventures Fund I, L.P. and Horizons Ventures Advisors Fund I, L.P., all Associates of Horizon Ventures Fund II, L.P., own more than ten percent of Invivodata, Inc., and therefore Invivodata is considered an Associate of Horizon Ventures Fund II as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

April 3, 2006.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E6–6489 Filed 4–28–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

SBA Lender Risk Rating System Notice and Request for Comments

SUMMARY: SBA is proposing for comment a lender risk rating system. The lender risk rating system is an internal tool to assist SBA in assessing the risk of each active 7(a) Lender and Certified Development Company's (''SBA Lender'') SBA loan operations, and loan portfolio, on a uniform basis and for identifying those institutions whose SBA loan operations and portfolio require additional SBA monitoring or other action. It is also a vehicle for assessing the aggregate strength of SBA's 7(a) and 504 portfolios. Under the lender risk rating system, SBA would assign each Lender a composite rating based on certain portfolio performance factors, which may be overridden in some cases due to Lender specific factors that may be indicative of a higher or lower level of risk. SBA Lenders would have access to their own ratings through SBA's Lender Portal.

DATES: SBA must receive comments on or before June 15, 2006.

ADDRESSES: You may submit comments by any of the following methods (1) E-mail *proposedriskrating@sba.gov*; (2) Fax: (202) 205–6831; (3) Mail: John M. White, Deputy Associate Administrator, Office of Lender Oversight, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (4) Hand Delivery/Courier: 409 Third Street, SW., Washington, DC 20416, c/o John M. White.

FOR FURTHER INFORMATION CONTACT: John M. White, Deputy Associate Administrator, Office of Lender Oversight, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205–3049.

SUPPLEMENTARY INFORMATION:

Background

SBA is developing an internal risk rating system for assessing an SBA Lender's 7(a) or 504 loan portfolio (i.e., loan portfolio performance). The risk rating system will be an internal tool that will assist SBA in assessing the risk of a Lender's 7(a) and 504 loan performance on a uniform basis and identify those Lenders whose portfolio performance demonstrates the need for additional SBA monitoring or other action. It is not intended to be a Lender grading system. The lender risk rating system will also serve as a vehicle to measure the aggregate strength of SBA's overall 7(a) and 504 loan portfolios and to assist SBA in managing the related risk. SBA will use Lender risk ratings to make more effective use of its on-site and off-site lender review and assessments resources. The proposed risk rating methodology is set forth below. SBA is soliciting comments on the risk rating methodology. During the comment period, SBA will provide Lenders access to their own preliminary risk ratings through SBA's Lender Portal. A more detailed discussion of the risk rating proposal and portal access follows.

Risk Rating Proposal

Overview

Under SBA's proposed risk rating system, SBA would assign all Lenders a composite rating. The composite rating would reflect SBA's assessment of the potential risk to the government of that Lender's SBA portfolio performance.

For 7(a) Lenders, SBA would base the composite rating on four common components or factors. The common factors for 7(a) Lenders would be as follows: (i) 12 month actual purchase rate; (ii) problem loan rate; (iii) three month change in the small business predictive score (SBPS), which is a small business credit score on loans in the 7(a) Lender's portfolio; and (iv) projected purchase rate derived from the SBPS.

For CDCs, SBA would base the composite rating on three common components or factors. The common factors for CDCs would be as follows: (i) 12 month actual purchase rate; (ii) problem loan rate; and (iii) average SBPS on loans in the 504 Lender's portfolio. The third factor replaces the third and fourth factors used for 7(a) Lenders because it was found, during the testing process, to be more predictive of SBA purchases for 504 Lenders.

In general, these factors reflect both historical lender performance and projected future performance. The factors are derived through formulas developed using regression analysis validated and tested by industry experts. SBA would perform quarterly calculations on the common factors for each Lender, so that Lenders' composite risk ratings would be updated on a quarterly basis. Each of the factors is described in more detail in the Rating Components section below.

The composite risk rating is a measure of how each Lender's loan performance compares to the loan performance of its peers. Thus, an individual Lender's overall loan performance (using all common factors) would be compared to its peers to derive that Lender's composite risk rating. Lenders whose overall portfolio performance (using all of the common factors) is worse than their peers will receive a worse, or higher score, while Lenders whose overall portfolio performance is better than their peers will receive a better, or lower, score.

SBA recognizes that it may be inequitable to compare all Lenders in a risk rating system, without separating them into peer groups, because changes in loan performance would have dramatically different impacts on the portfolio performance of Lenders of different sizes. For example, the purchase of one loan from a Lender would have a much higher impact on the actual purchase rate component of a Lender with a small portfolio than it would on the actual purchase rate of a Lender with a large portfolio. Therefore, SBA has established peer groups to minimize the differences that could result from changes in loan performance for portfolios of different sizes. The peer groups are as follows (based on outstanding SBA guaranteed dollars):

7(a) Lender Peer Groups	CDC Peer Groups
$100,000,000 or more	$100,000,000 or more.
$10,000,000–$99,999,999	$30,000,000–$99,999,999.
$4,000,000–$9,999,999	$10,000,000–$29,999,999.
$1,000,000–$3,999,999	$5,000,000–$9,999,999.
$0–$999,999 (lenders disbursed at least one loan in past 12 months)	Less than $5,000,000.
$0–$999,999 (lenders did not disburse at least one loan in past 12 months).	

As noted above, the common components would be used to derive a composite risk rating for each 7(a) and 504 Lender. Under the proposal, no single component factor would normally decide the Lender's composite rating. However, depending upon the size of the peer group, and the variation between a Lender's performance and that of its peers, a single factor could carry a disproportionate weight among the three or four components.

Composite Rating

SBA would assign a composite rating of 1 to 5 to each Lender based upon their portfolio performance. A rating of 1 would indicate strong portfolio performance, least risk, and the least degree of SBA management oversight is needed (relative to other Lenders in their peer group), while a 5 rating would indicate weak portfolio performance, highest risk, and therefore, the highest degree of SBA management oversight. SBA proposes the following definitions for the composite ratings.

Composite 1—The SBA operations of a Lender rated 1 would be considered strong in every respect, and would likely score much better than SBA averages in all or nearly all of the rating components described in this notice. A Lender rated 1 would have relatively stable component factors and overall composite rating from one quarter to the next. Since the component factors measure previous performance, and also attempt to predict future performance, a Lender rated 1 would be more likely to have well below average historical purchase rates, as well as well below average current problem loan rates that would predict lower than average future purchase rates. Overall, loans in the portfolio of a Lender rated 1 would demonstrate highly acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. A Lender rated 1 would typically also have a well managed SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and larger Lenders). Based on the strengths outlined in this composite rating, Lenders rated a 1 would present SBA with the least amount of risk, and would thus be subject to the lowest level of SBA oversight compared to other Lenders in the same peer group.

Composite 2—The SBA operations of a Lender rated 2 would be considered good, and would likely be above average in all or nearly all of the rating components described in this notice. A Lender rated a 2 would have component factors and a composite rating that would typically be relatively stable from one quarter to the next. A Lender rated 2 would be more likely to have below average previous (historical) purchase rates, as well as below average current problem loan rates that would predict lower than average future purchase rates. Generally, loans in the portfolio of a Lender rated 2 would demonstrate better-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. A Lender rated 2 would likely have a generally well managed (i.e., a few minor exceptions or findings) SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and large Lenders). Based on the strengths outlined in this composite rating. Lenders rated a 2 would present SBA with a lower level of risk, and would thus be subject to a lower level of SBA oversight compared to other Lenders in the same peer groups.

Composite 3—The SBA operations of a Lender rated 3 would be considered about average in all or nearly all of the rating components described in this notice. A Lender rated a 3 would have, on average, component factors and an overall composite rating that would generally be relatively stable from one quarter to the next. A Lender rated 3 would likely have average previous (historical) purchase rates (as compared to their peers), as well as average current problem loans rates that would predict future purchase rates in line with SBA portfolio averages. Generally, loans in the portfolio of a Lender rated 3 would demonstrate acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. A Lender rated 3 would have an adequate (*i.e.*, some minor exceptions or findings, but few if any major exceptions or findings, which can be corrected in the normal course of business) SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and large Lenders). However, Lenders rated a 3 would have room for improvement, should monitor their portfolio closely, and consider methods to improve loan performance. Based on the strengths and weaknesses outlined in this composite rating, Lenders rated a 3 would present SBA with an acceptable level of risk, and would thus be subject to standard SBA oversight compared to other Lenders in the same peer group. Oversight may include requests for corrective action plans.

Composite 4—The SBA operations of Lender rated 4 would be considered below average in all or nearly all of the rating components described in this notice. A Lender rated a 4 may have several changes in any of its components factor rates; the component factors and overall composite rating may demonstrate instability or negative performance from one quarter to the next. A Lender rated 4 would be likely have above average previous (historical) purchase rates (as compared to their peers), as well as above average current problem loan rates that would predict future purchase rates above SBA portfolio averages. Generally, loans in the portfolio of a Lender rated 4 would demonstrate somewhat less-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. A lender rated 4 would likely have a poorly managed (i.e., both minor exceptions or findings, and major exceptions or findings) SBA loan program as demonstrated through on-site or off-site reviews and assessments (of mid-size and large Lenders). Based on the weaknesses outlined in this composite rating, Lenders rated a 4 would present SBA with a less-than-acceptable level of risk, and would thus be subject to greater than normal SBA oversight compared to other Lenders in the same peer group. Oversight measures could include (but are not limited to) additional reviews or assessments, requests for corrective action plans, and/or removal from delegated loan programs, depending

upon the level of activity and peer group.

Composite 5—The SBA operations of a Lender rated 5 would be considered well below average in all or nearly all of the rating components described in this notice. A Lender rated a 5 is most likely to have changes in any of its component factor rates, and have the greatest likelihood to have their component factors and overall composite rating demonstrate instability or negative performance from one quarter to the next. A Lender rated 5 would be probably have well above average previous (historical) purchase rates, as well as well above average current problem loan rates that would predict future purchase rates above SBA portfolio averages. Generally, loans in the portfolio of a Lender rated 5 would demonstrate less-than-acceptable credit quality and/or credit trends as measured by credit scores and portfolio performance. A Lender rated 5 would likely have a record of significant SBA program compliance issues as demonstrated through on-site or off-site reviews and assessments (of mid-size and large Lenders). Based on the substantial weaknesses outlined in this composite rating, Lenders rated a 5 would present SBA with the highest level of risk, and would thus be subject to extensive SBA oversight compared to other Lenders in the same peer group. Oversight measures could include (but are not limited to) additional reviews or assessments, requests for corrective action plans, and and/or removal from delegated loan programs, depending upon the level of activity and peer group.

The descriptions within each Composite rating are not meant as definitions of the ratings, but are given to provide, in general, the characteristics a Lender receiving a particular rating may exhibit. Consequently, a Lender assigned a particular composite rating may not exhibit every characteristic described for that rating, nor would SBA's action be limited to those stated in the descriptions.

In some cases, SBA may have reason to believe that a Lender's calculated composite rating may not fully reflect the level of risk that individual Lender presents. In those cases, SBA may override the composite risk rating (either positively or negatively) and assign a different composite score. Should a decision be made to override the composite score, SBA will provide the Lender with an explanation of the reason(s) for the override. More information on overrides of composite ratings is provided in the overriding factors section of this notice.

SBA's proposal to base composite ratings on a numeric scale is similar to rating systems used by bank regulators and other federal loan guarantors. For example, SBA's composite rating of 1 is similar to that of a bank regulator in that it is indicative of an institution with strong performance and requiring little management oversight. SBA's rating system is similar to those of other federal loan guarantors because it measures risk and portfolio performance of loan portfolios guaranteed by SBA, rather than measuring the quality of the entire institution.

Rating Components

The 4 Common Components for 7(a) Lenders:

SBA's proposed quantitative risk rating system for 7(a) Lenders features four common component factors. The four common rating components are defined below.

(i) Past 12 Month Actual Purchase Rate—The Past 12 Month Actual Purchase Rate is an historical measure of SBA purchases from the Lender in the preceding 12 months. Thus, this component provides a measure of Lender performance and risk as indicated by actual SBA purchases. SBA calculates this ratio by dividing the sum of total gross dollars of the Lender's loans purchased during the past 12 months (numerator) by the sum of total gross outstanding dollars of their SBA loans outstanding at the end of the 12-month period, plus gross dollars purchased during the past 12 months (denominator).

(ii) Problem Loan Rate—The Problem Loan Rate provides an indication of current Lender risk. This problem loan indicator helps measure Lender performance and risk by showing current delinquencies and liquidations, as well as predicting potential future purchases by SBA. SBA calculates the problem loan rate by dividing total gross outstanding dollars of a Lender's loans that are 90 days or more delinquent plus gross dollars in liquidation, excluding purchases of active loans, (numerator) by the total gross dollars outstanding (denominator).

(iii) 3 Month Change in Small Business Predictive Scores (SBPS)—The SBPS is a portfolio management (not origination) credit score based upon a borrower's business credit report and principal's consumer credit report. SBPS is a proprietary calculation provided by Dunn & Bradstreet, under contract with SBA, and is compatible with Fair, Isaac & Co.'s ''Liquid Credit'' origination score. This component signals increasing or declining purchase risk by measuring changes in borrower credit trends, and acts as a predictor of possible future loan delinquencies, liquidations, and SBA purchases. The 3 month change in SBPS is calculated by measuring the percentage change, on a dollar-weighted average basis, of the SBPS on all outstanding SBA loans held by the lender, from the previous quarter to the current quarter.

(iv) Projected Purchase Rate—The Projected Purchase Rate is a predictive measure of the probability of the amount of SBA guaranteed dollars in a Lender's portfolio that are likely to be purchased by SBA. This factor uses credit bureau data on a Lender's individual SBA loans to project the purchase rate of a Lender's SBA portfolio. It is a 12-month projection of future performance based on the most current credit data on a borrower's payment history. For each of a Lender's SBA loans outstanding, SBA multiplies the amount of guaranteed loan dollars outstanding by the probability of its purchase (as determined by the SBPS of the individual loan) and totals the sum of each individual loan outstanding. This total (numerator) is then divided by the Lender's total SBA-guaranteed dollars outstanding (denominator).

The 3 Common Components for CDCs:

SBA's proposed quantitative risk rating system for 504 Lenders features three common component factors. The three common rating components are defined below.

(i) Past 12 Month Actual Purchase Rate—The Past 12 Month Actual Purchase Rate is an historical measure of SBA purchases from the CDC in the preceding 12 months. Thus, this component provides a measure of CDC performance and risk as indicated by actual SBA purchases. SBA calculates this ratio by dividing the sum of total SBA gross dollars of the CDC's loans purchased during the past 12 months (numerator) by the sum of total SBA gross dollars of their SBA loans outstanding at the end of the 12-month period, plus total SBA gross dollars purchased during the past 12 months (denominator).

(ii) Problem Loan Rate—The Problem Loan Rate provides an indication of current CDC risk. This problem loan indicator helps measure CDC performance and risk by showing current delinquencies and liquidations, as well as predicting potential future purchases by SBA. SBA calculates the problem loan rate by dividing the total SBA gross dollars of a CDC's loans that are 90 days or more delinquent plus total SBA gross dollars of a CDC's loans

in liquidation (numerator), by the total SBA gross dollars outstanding (denominator).

(iii) Average Small Business Predictive Scores (SBPS)—The SBPS is a portfolio management (not origination) credit score based upon a borrower's business credit report and principal's consumer credit report. SBPS is a proprietary calculation provided by Dunn & Bradstreet, under contract with SBA, and is compatible with Fair, Isaac & Co.'s ''Liquid Credit'' origination score. This component provides an indication of the relative credit quality of the loans in a CDC's SBA portfolio. The score is calculated from the average SBPS score of the loans in a CDC's portfolio, weighted by each loan's guaranteed loan dollars outstanding.

Each of the common components described above would reflect a different means of measuring a Lender's risk to SBA in terms of loan purchase data. Loan purchase metrics provide a core gauge of SBA lending success and program risk. SBA believes a risk rating system emphasizing purchase indicators would be a good measure of SBA lending risk because purchases are a strong indicator of the cost to SBA, and predictive of final charge offs and loan recoveries. In addition, loan purchases are resource intensive and an administrative expense to SBA that reduces SBA's ability to provide assistance to small businesses. Finally, SBA is a ''gap'' lender, and purchases are a prime indicator of the failure of the financing to assist in the growth and development of small businesses.

Overriding Factors

In addition to the common components calculated through the use of loan performance factors, the proposed risk rating system allows for consideration of additional factors. The occurrence of these factors may lead SBA to conclude that an individual lender's composite rating is not fully reflective of its true risk. Therefore, the proposed risk rating system would provide for the consideration of overriding factors, which may only apply to a particular Lender or group of Lenders, and permit SBA to adjust a Lender's overall composite rating. The allowance of overriding factors in helping determine a Lender's risk rating would enable SBA to use key risk factors that are not necessarily applicable to all Lenders, but indicate a greater or lower level of risk from a particular Lender than that which the calculated score provides.

One of the most important overriding factors would be a Lender's on-site risk-based reviews/assessments usually performed on SBA's relatively large Lenders, or that may (under extraordinary circumstances) be performed on other Lenders whose performance demonstrates a highly unusual deviation from their peer group. SBA conducts on-site reviews of large Lenders, performs safety and soundness reviews of SBA Supervised Lenders, and uses certain off-site evaluation measures for less active Lenders. Consequently, these assessments, as a factor, may only be available for a fraction of SBA's approximately 5200 Lenders. Examples of other overriding factors that may be considered are: Early loan default trends; purchase rate or projected purchase rate trends; abnormally high default, purchase or liquidation rates; denial of liability occurrences; lending concentrations; rapid growth of SBA lending; inadequate, incomplete, or untimely reporting to SBA or inaccurate submission of required fees to SBA; and enforcement actions of regulators or other authority. This list is not all inclusive; however, SBA does not expect any of the overriding factors to affect a significant number of composite scores.

Request for Comments

SBA is undertaking a deliberative development of the Lender risk rating system. The proposed risk rating system utilizes predictive modeling and behavioral scoring systems developed by private sector industry leaders in credit risk analysis. SBA has and will continue to perform annual validation testing on the risk rating system, and will further refine the system as necessary to improve the predictability of its risk scoring. SBA is requesting comments from the public on all aspects of the proposed risk rating system.

To facilitate written comments on the proposed risk rating system, SBA will provide Lenders access to their own preliminary risk ratings, as well as average peer and portfolio performance information. SBA will provide Lenders access to this information through the use of the Lender Portal developed for SBA's Loan and Lender Monitoring System (L/LMS). Once the risk rating system is finalized, Lenders will have access to their final quarterly ratings through the portal. Additional guidance on portal access follows.

Lender Portal

Overview

SBA intends to communicate Lender performance to Lenders through the use of SBA's Lender Portal. The portal will allow Lenders to view their own quarterly performance data, including their most current composite risk rating. Lenders can also access data on peer group and portfolio averages. Consequently, a Lender will be able to gauge its performance relative to its peer group and the portfolio norm. While Lenders can view their ratings, their performance indicators, and peer and portfolio averages, they will not be able to view the individual ratings and performance indicators of other Lenders. The quarterly performance data will be overwritten on a quarterly basis; therefore, SBA recommends that Lenders save their performance data for their own tracking and trend analysis purposes.

Portal Data

SBA plans to update portal data quarterly approximately six to eight weeks after a calendar quarter ends. Lenders will only be able to access the most recent quarterly data. Lenders will not be able to access previous quarters' data following an update.

Correcting Portal Data

Portal data includes both summary performance and credit quality data. Because summary performance data is largely derived from data that Lenders provide to SBA through 1502 and 172 Reports, Lenders bear much of the responsibility for ensuring data accuracy. If a Lender reviews its performance components and they do not comport with its own data records, the Lender should confirm the accuracy of the underlying data. If the Lender determines that the data is inaccurate, it should seek to amend any incorrect data through SBA's normal processing channels (for example—for loan performance data, Lender should contact SBA's fiscal and transfer agent).

Credit quality data used to help establish certain component scores is derived from credit bureau reports of the borrower business and its principals/guarantors. To the extent that credit quality data relies on information that a Lender provides on the business, its principals, and guarantors contained in the loan application and as required to be updated by the Lender, the Lender must take responsibility for ensuring this information is correct, complete, and updated. SBA recognizes that underlying borrower credit data cannot be changed by SBA or a Lender. Therefore, any changes to data provided to credit bureaus must be reported directly to Dunn & Bradstreet or Trans Union, as appropriate, by the borrower. All corrections to portal data (both summary performance and credit quality data) will be reflected in the

quarterly update following the quarter in which the correction is entered.

Portal Access

Lenders with at least one outstanding SBA loan will be able to apply for portal access. SBA will issue only one portal user account per Lender. Lenders must submit initial requests for a portal user account (or requests to switch or terminate a user) by regular or overnight mail to SBA at the following address: Office of Lender Oversight—Capital Access, Suite 8200; Mail Code 7011, ATTN: Lender Portal, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Lenders must take the following steps in requesting portal access:

(1) Request must be made by a senior officer of the Lender (Senior VP or above).

(2) Request must be sent via regular or overnight mail to the address provided above.

(3) Request must be made using the Lender's stationery.

(4) Request must include the user's business card.

(4) The stationery and business card should include the Lender's name and address.

(5) The request should include the following data:

(a) SBA FIRS ID Number(s).

(b) Account user's name.

(c) Account user's title.

(d) Account user's mailing address at the Lender.

(e) Account user's telephone number at the Lender.

(f) Account user's e-mail address at the Lender.

(g) Requesting officer's name.

(h) Requesting officer's title.

(i) Requesting officer's mailing address at the Lender.

(j) Requesting officer's telephone number at the Lender.

(k) Requesting officer's e-mail address at the Lender.

Once SBA receives and approves the user request, the Agency will forward the approval to SBA's portal contractor for issuance of a user account name and password. The portal contractor will e-mail the user his or her user name and password within approximately two weeks of account approval. The user can then access its data by logging into the Lender portal Web page at *https://pdp.dnb.com/pdpsba/pdplogin.asp.*

Lender Portal Responsibilities

Lenders are responsible for complying with SBA's requirements in obtaining and maintaining the portal user accounts and passwords as set forth below and as published from time to time. Lenders are also responsible for timely informing SBA to terminate or switch an account if the person to whom it was issued no longer holds that responsibility for the Lender. Upon accessing the lender portal, Lenders must take full responsibility for protecting the confidentiality of the user password and lender risk rating information and for ensuring the security of the data.

Confidentiality Agreement

By clicking on the Portal log-in button to access the SBA Lender Information Portal (''Portal''), Lender will agree to use the Confidential Information (defined in the Portal) contained in the Portal only for confidential use within its own immediate corporate organization, and to hold and maintain the Confidential Information in confidence in accordance with the terms of the Agreement. Lender will agree to restrict access to the Confidential Information to those of its officers and employees who have a legitimate need to know such information for the purpose of assisting the Lender in improving the Lender's 7(a) or 504 program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management (each referred to as a ''permitted party''), and to those for whom SBA has approved access by prior written consent and for whom access is required by applicable law or legal process. If such law or process requires Lender to disclose the Confidential Information to any person other than a permitted party, Lender will agree to promptly notify SBA and SBA's Information Provider (defined below) in writing so that SBA and the Information Provider have, within their sole discretion, the opportunity to seek appropriate relief such as an injunction or protective order prior to Lender's disclosure. In addition, Lender will agree to ensure that each permitted party is aware of the requirements of the Agreement and to ensure that each such permitted party agrees to the terms and conditions. Lender will agree not to disclose, and will agree to protect from disclosure, Lender's password to enter the Portal. Further, any disclosure of Confidential Information other than as permitted by the Agreement may result in appropriate action as authorized by law. Lender also will agree to indemnify and hold harmless each of SBA and any provider of the Confidential Information from and against any and all claims, demands, suits, actions, and liabilities to any degree based upon or resulting from the unauthorized use or disclosure of the Confidential Information. ''Information Provider'' means Dun & Bradstreet. (Mail Provider Information notice to Dun & Bradstreet, Legal Department, 103 JFK Parkway, Short Hills, NJ 07078.)

No information contained in the Portal shall be relied upon for any purpose other than SBA's lender oversight and SBA's portfolio management purposes. In addition, Lender will acknowledge and agree that the Confidentiality Agreement is for the benefit not only of the SBA but also of any party providing the Confidential Information. Any such party shall have the right and standing to pursue all legal and equitable remedies against the Lender in the event of unauthorized use or disclosure.

Portal Inquiries

For general inquiries, a Lender may submit its e-mail to *lender.portal@sba.gov.* If a Lender needs to speak to an individual on a non-technical matter, it may contact Paul Bishop at 202–205–7516. SBA advises a Lender to state upfront its Lender name, address, FIRS number, and user name to expedite processing of all inquiries.

Dated: April 26, 2006.

Michael W. Hager,

Associate Deputy Administrator, Office of Capital Access.

[FR Doc. E6–6506 Filed 4–28–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement; Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, Department of Transportation

ACTION: Notice of Intent; notice of scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice of Intent to announce publicly that an Environmental Impact Statement (EIS) will be prepared and considered for the proposed construction of a replacement runway, proposed terminal development, ancillary development, and air traffic procedures developed in the Part 150 Study for the replacement runway. Associated improvements involved with the proposed project are described below.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Jones, Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite

107, Romulus, Michigan 48174, (734) 229–2958. Project Web site: *http://www.airportsites.net/CMH-EIS*.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA, in cooperation with the Columbus Regional Airport Authority (CRAA), will prepare an EIS for a proposed project to replace Runway 10R/28L at the Port Columbus International Airport, approximately 700 feet south of the existing Runway 10R/28L; new terminal facilities in the midfield area; ancillary in support of the replacement runway and midfield terminal; and noise abatement air traffic procedures developed for the replacement runway.

The replacement runway would be 10,113 feet long. This length would maintain the airport's ability to accommodate current and projected airport operations. Existing Runway 10R/28L would be decommissioned as a runway and converted into a taxiway upon commissioning of the replacement runway. In addition, a south taxiway and north parallel taxiways to proposed Runway 10R/28L would be constructed.

To meet future aircraft parking and passenger processing requirements, new midfield terminal facilities are needed. The EIS will assess a development envelope that is defined as an area large enough to encompass Phase I and II of the CRAA terminal development program. The number of gates, approximate square footage, approximate curb frontage, and the number of passengers that the terminal would accommodate will be discussed throughout the process.

Ancillary facilities in support of the replacement runway and midfield terminal would be constructed . The facilities include roadway relocations and construction; parking improvements; property acquisition; and relocation of residences, businesses, and farms, as necessary.

The CRAA is in the process of preparing a 14 CFR part 150 Noise Compatibility Study Update (Part 150 Update) to address the current and future noise conditions. The Part 150 Update will include an analysis of the potential noise and land use impacts resulting from the proposed development of relocating Runway 10R/28L to the south, as well as possible mitigation options. Any noise abatement air traffic options recommended through the Part 150 Update will be included in the EIS as part of the part of the proposed project. In addition, any land use mitigation that is recommended in the Part 150 Update for the proposed project will be included in the EIS.

The EIS will include the evaluation of a no action alternative and other reasonable alternatives that may be identified during the agency and public scoping meetings. The EIS will determine all environmental impacts, such as and not limited to, noise impacts, impacts on air and water quality, wetlands, ecological resources, floodplains, historic resources, hazardous wastes, socioeconomics, and economic factors.

Scoping: To resure that the full range of issues related to the proposed project is addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Public and agency scoping meetings will be conducted to identify any significant issues associated with the proposed project.

An agency scoping meeting for all Federal, state, and local environmental regulatory agencies will be held on May 31, 2006. This meeting will take place at 10 a.m. in the Emergency Operations Center at the Port Columbus International Airport, 4600 International Gateway, Columbus, Ohio 43219.

Two public scoping meetings for the general public will be held on the evenings of May 31, 2006 and June 1, 2006. The meetings will be conducted at two locations, one at the Holiday Inn, 750 Stelzer Road, Columbus, OH 43219 and the other at the Ramda Inn, 4801 East Broad Street, Columbus, Ohio 43213. Both meetings will be held between 5 p.m. and 8 p.m.

Written comments may be mailed to the Informational contact listed above within 30 days following the scoping meetings.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Romulus, Michigan, April 21, 2006.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–4037 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft and Working Groups 1–3 and Sub-Groups 1–3.

DATES: The meeting will be held May 16–19, 2006, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http:www.rtca.org*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. The agenda will include:

- May 16:
- Sub-Group 1, 2 & 3 Writing Teams in working sessions.
- May 17:
- Opening Plenary Session (Welcome and Introductory Remarks, Approval of Fifth Plenary Summary, Review SC–203 Progress Since Fifth Plenary, Other Business, Prepare for Plenary #7, Plenary Adjourns).
- Sub-Group Writing Teams in working sessions.
- May 18:
- Sub-Group 1, 2 & 3 Writing Teams continue in working sessions.
- Working Groups 2 & 3 Teams in working session.
- May 19:
- Sub-Group 1, 2, & 3 Writing Teams in working sessions.
- Working Groups 2 & 3 in working session.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 18, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–4038 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting: Special Committee 209, Air Traffic Control Radar Beacon Systems (ATCRBS)Mode S Transponder

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 209, ATCRBS/Mode S Transponder.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 209, Air Traffic Control Radar Beacon Systems (ATCRBS)/Mode S Transponder.

DATES: The meeting will be held May 23, 2006, from 9 a.m.–5 p.m., and May 24, from 9 a.m.–4 p.m.

ADDRESSES: The meeting will be held at L–3/Titan Group, 5218 Atlantic Avenue, 3rd floor, Mays Landing, NJ 08330.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* Host Contact: Gary Furr (609) 625–5669; e-mail *gary.ctr.furr@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 209 meeting. The agenda will include:

- May 23–24:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review/Approval of Agenda, Review/Approval of Minutes from Meeting #1).
- Report from Team reviewing the ADLP MOPS, DO–218B.
- Report from Team reworking DO–181C.
- Report from Team reviewing the udpate of Text Procedures.
- Status of coordination with WG–49 on Comparison Data Base.
- Review Status of Action Items.
- Closing Plenary Session (Other Business, Discussion of Agenda for Next Meeting, Date, Place and Time of Future Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 24, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–4039 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in South Carolina

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 various proposed highway projects in the State of South Carolina. Those actions grant licenses, permits, and approvals for the projects.

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 any of the listed highway projects will be barred unless the claim is filed on or before October 30, 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. Robert L. Lee, Division Administrator, Federal Highway Administration, 1835 Assembly Street, Suite 1270, Columbia, SC 29201; Telephone: (803) 765–5411; e-mail: *bob.lee@fhwa.dot.gov.* The FHWA South Carolina Division Office's normal business hours are 7 a.m. to 4:30 p.m. (eastern time). You may also contact Mr. J. Berry Still, P.E., South Carolina Department of Transportation, 955 Park Street, P.O. Box 191, Columbia, SC 29202–0191; Telephone: (803) 737–9967; e-mail: *StillJB@scdot.org.*

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 highway project in the State of South Carolina that is listed below. The project will improve safety on US 17 from US 21 in Gardens Corner to SC 64 in Jacksonboro while preserving community values and protecting the natural and scenic environment of the ACE Basin. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the documented environmental assessment (EA) and Finding of Significant Impact (FONSI) issued in connection with the project, and in other documents in the FHWA administrative record for the project. The EA, FONSI and other documents from the FHWA administrative record files for the listed project are available by contacting the FHWA or the SCDOT at the addresses provided above.

This notice applies to all Federal agency decisions on the listed project 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: 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.
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
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.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological 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: Clean Water Act, [33 U.S.C.] 1251–1377 (Section 404, Section 401, Section 319); Coastal Barrier Resources Act, 16 U.S.C. 3501–3510; Coastal Zone Management Act, 16 U.S.C. 1451–1465; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; 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. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

9. 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.

The project subject to this notice is:

Project Location: US–17—Beaufort and Colleton Counties, US–17—ACE Basin Widening between Gardens Corner and Jacksonboro. The project proposes a combination of alignment shifts to avoid and minimize environmental impacts as much as practicable while maintaining the safety and scenic nature of roadway. An EA was issued on September 16, 2005 and a FONSI was issued on April 7, 2006.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 1391(l)(1).

Issued on: April 25, 2006.

Robert Lee,

Division Administrator, FHWA–SC Division, Columbia, SC.

[FR Doc. 06–4090 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24619]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BLUE ICE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24619 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 31, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 24619. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BLUE ICE is:

Intended Use: ''Passenger (6 or fewer).''

Geographic Region: Florida.

Dated: April 25, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–6515 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24620]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BLUEBIRD.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24620 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 31, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 24620. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th

St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BLUEBIRD is:

Intended Use: ''Carry passengers for hire.''

Geographic Region: Washington, Oregon, Alaska.

Dated: April 25, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–6514 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24617]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JOHN W.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24617 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 31, 2006.

ADDRESSES: Comments should refer to docket number MARAD 2006 24617. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JOHN W is:

Intended Use: ''day charter, overnight charter.''

Geographic Region: Albemarle Sound, North Carolina and environs.

Dated: April 25, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–6523 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24616]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LEA SCOTIA.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006 24616 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 31, 2006.

ADDRESSES: Comments should refer to docket number MARAD 2006 24616. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel LEA SCOTIA is:

Intended Use: ''private charter.''

Geographic Region: Puget Sound, San Juan Islands, West Coast US.

Dated: April 25, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–6520 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2006 24618]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SINGAWING.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2006–24618 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 31, 2006.

ADDRESSES: Comments should refer to docket number MARAD–2006 24618. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SINGAWING is:

Intended Use: ''6-pack charters.''

Geographic Region: Coastal and inland waters of Washington State.

Dated: April 25, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–6517 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–06–24304 (Notice No. 06–2)]

Safety Advisory: Manufacture, Marking, and Sale of Untested Compressed Gas Cylinders

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

ACTION: Safety advisory notice.

SUMMARY: PHMSA was recently notified of the manufacture, marking, and sale of certain high pressure DOT exemption cylinders that were not tested in accordance with applicable regulatory requirements. These cylinders were manufactured and/or distributed by Luxfer, Inc. (Luxfer), Riverside, CA. Luxfer and its independent inspection agency, Arrowhead Industrial Services, Inc. (Arrowhead), reported to PHMSA that 6,325 high pressure cylinders manufactured to the DOT CFFC and FRP–1 standards as authorized in DOT–E 10915, DOT–E 9634, and DOT–E 9894, had been shipped from Luxfer without undergoing the required autofrettage and hydrostatic tests. In a joint effort, Luxfer and Arrowhead have retrieved 2,581 of the untested cylinders. The model numbers and serial numbers of the remaining 3,744 cylinders are listed in this notice. Only cylinders with the listed serial numbers listed are affected. A person with a listed cylinder should discontinue use of the cylinder and return it to Arrowhead at the address below so the autofrettage and hydrostatic test can be completed before its next use. Shippers and compressed gas filling facilities are advised that these cylinders do not meet the requirements of the Hazardous Materials Regulations and may not be offered for transportation or transported until the required testing is completed.

FOR FURTHER INFORMATION CONTACT: Wayne E. Chaney, Cylinder Program Manager, Office of Hazardous Materials Enforcement, (202) 366–4700, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Room 7104, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Luxfer and its independent inspection agency, Arrowhead Industrial Services, Inc. (Arrowhead), reported to PHMSA that 6,325 high pressure cylinders manufactured to the DOT CFFC and FRP–1 standards as authorized in DOT–E 10915, DOT–E 9634, and DOT–E 9894, had been shipped from Luxfer without undergoing the required autofrettage and hydrostatic tests. In a joint effort, Luxfer and Arrowhead have retrieved 2,581 of the untested cylinders. PHMSA has compiled a list of all model and serial number markings of the remaining cylinders identified by Luxfer and Arrowhead that were not properly tested prior to distribution. Information provided to PHMSA indicates many of these cylinders are being used as self-contained breathing apparatus, in paint ball applications, and in aircraft slide service. Any person possessing a cylinder manufactured by Luxfer and marked with exemption number DOT–E 10915, DOT–E 9634, or DOT–E 9894 and marked with one of the serial numbers listed in this notice should take the cylinder to a qualified refilling station and have the pressure relieved from the cylinder. The cylinder should be returned to Arrowhead Industrial Services for autofrettage and hydrostatic testing before further use. Refilling stations and cylinder requalification facilities are advised that any cylinders marked with DOT–E 10915, DOT–E 9634, or DOT–E 9894 should be checked against the attached

list of serial numbers before they are filled or requalified for service. To make arrangements to have an affected cylinder autofrettaged and hydrostatically tested, contact Arrowhead Industrial Services, Inc., 3537 South NC 119, P.O. Box 1000, Graham, NC 27253; telephone (336) 578–2777.

This safety advisory covers only the high-pressure DOT exemption cylinders manufactured by Luxfer that have a model number and serial listed on the attached list. Not all cylinders manufactured by Luxfer under DOT–E 10915, DOT–E 9634, and DOT–E 9894 are affected.

Model No. (# of cylinders)	Serial Nos.
LI7A MSA (42)	6276, 6277, 6278, 6279, 6280, 6281, 6282, 6283, 6284, 6285, 6286, 6287, 6288, 6289, 6290, 6291, 6292, 6293, 6294, 6295, 6296, 6297, 6298, 6299, 6300, 6301, 6302, 6303, 6304, 6305, 6306, 6307, 6308, 6309, 6310, 6311, 6312, 6313, 6314, 6315, 6316, 6317
LI7D SURV (12)	154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165
LI7M MSA (3)	1282, 1287, 1307
L45G–1 SURV (38)	95899, 95900, 95903, 95904, 95905, 95906, 95907, 95908, 95909, 95910, 95911, 95912, 95913, 95914, 95915, 95917, 95918, 95919, 95921, 95922, 95925, 95927, 95928, 95929, 95930, 95931, 95932, 95933, 95934, 95935, 95936, 95938, 95940, 95941, 95942, 95943, 95944, 95945
L45G–2 Scott IJ (108)	111401, 111561, 113303, 111404, 111562, 113305, 111409, 111565, 113307, 111550, 111567, 113310, 111551, 111576, 113311, 111553, 111577, 113313, 111554, 111579, 113316, 111556, 111580, 113317,, 111557, 111581, 113318, 111558, 111582, 113324, 111560, 111585, 113409, 111586, 113445, 111587, 113450, 111588, 113451, 111589, 113452, 111590, 113453, 112470, 113454, 112475, 113455, 112478, 113456, 112479, 113457, 113201, 113459, 113204, 113460, 113219, 113461, 113230, 113462, 113236, 113464, 113241, 113473, 113248, 113474, 113252, 113480, 113254, 113492, 113258, 113498, 113263,, 113532, 113264, 113533, 113265, 113536, 113267,, 113538, 113269, 113542, 113272, 113544, 113273,, 113547, 113274, 113548, 113277, 113550, 113281, 113555, 113282, 113556, 113284, 113564, 113285, 113569, 113286, 113833, 113288, 113867, 113294, 113905, 113298, 114633, 113299, 114671, 113302
L45J–1 SURV (117)	29576, 29630, 29838, 29577, 29631, 29840, 29578, 29632, 29841, 29579, 29633, 29844, 29580, 29634, 29845, 29581, 29635, 29846, 29582, 29636, 29848, 29583, 29637, 29849, 29584, 29638, 29850, 29586, 29639, 29853, 29587, 29640, 29858, 29588, 29641, 29860, 29589, 29642, 29861, 29590, 29643, 29862, 29591, 29644, 29863, 29592, 29645, 29864, 29593, 29647, 29865, 29594, 29648, 29866, 29595, 29649, 29867, 29596, 29650, 29597, 29651, 29598, 29652, 29599, 29653, 29600, 29654, 29602, 29655, 29603, 29656, 29604, 29657, 29605, 29658, 29606, 29659, 29607, 29660, 29609, 29661, 29610, 29662, 29611, 29663, 29612, 29665, 29613, 29667, 29615, 29668, 29616, 29670, 29617, 29812, 29618, 29815, 29619, 29816, 29620, 29818, 29621, 29822, 29622, 29823, 29623, 29824, 29624, 29832, 29625, 29833, 29626, 29834, 29628, 29836, 29629, 29837
L45J–14 SURV (1)	42177
L45J–19 SURV (7)	42986, 42987, 42988, 42989, 42990, 42991, 42992
L45M–44 SCOTT (54)	49855, 49904, 49856, 49905, 49857, 49906, 49858, 49907, 49859, 49908, 49860, 49861, 49862, 49863, 49864, 49865, 49866, 49867, 49868, 49869, 49870, 49871, 49872, 49873, 49874, 49875, 49876, 49877, 49878, 49879, 49880, 49881, 49882, 49883, 49884, 49885, 49886, 49887, 49888, 49889, 49890, 49891, 49892, 49893, 49894, 49895, 49896, 49897, 49898, 49899, 49900, 49901, 49902, 49903
L45M–1 MSA (73)	76785, 76786, 76787, 76788, 76789, 76790, 76791, 76792, 76793, 76794, 76795, 76796, 76797, 76798, 76799, 76800, 76801, 76802, 76803, 76804, 76805, 76806, 76807, 76808, 76809, 76810, 76811, 76812, 76813, 76814, 76815, 76816, 76817, 76818, 76819, 76820, 76821, 76822, 76823, 76824, 76825, 76826, 76827, 76828, 76829, 76830, 76831, 76832, 76833, 76834, 76835, 76836, 76837, 76838, 76839, 76840, 77553, 77559, 77560, 77564, 77565, 77568, 77575, 77579, 77580, 77585, 77589, 77596, 77597, 77615, 77634, 77649, 77650

Model No. (# of cylinders)	Serial Nos.
L45M–18 SCOTT (888)	136584, 136585, 136586, 136587, 136588, 136589, 136590, 136591, 136592, 136593, 136594, 136595, 136596, 136597, 136598, 136599, 136600, 136601, 136602, 136603, 136604, 136605, 136606, 136607, 136608, 136609, 136610, 136611, 136612, 136613, 136614, 136615, 136616, 136617, 136618, 136619, 136620, 136621, 136622, 136623, 136624, 136625, 136626, 136627, 136628, 136629, 136630, 136631, 136632, 136633, 136634, 136635, 136636, 136637, 136638, 136639, 136640, 136641, 136809, 136810, 136811, 136812, 136813, 136814, 136815, 136816, 136817, 136818, 136819, 136820, 136821, 136822, 136823, 136824, 136825, 136826, 136827, 136828, 136829, 136830, 136831, 136832, 136833, 136834, 136835, 136836, 136837, 136838, 136839, 136840, 136841, 136842, 136843, 136844, 136845, 136846, 136847, 136848, 136849, 136850, 136851, 136852, 136853, 136854, 136855, 136856, 136857, 136858, 136859, 136860, 136861, 136862, 136863, 136864, 136865, 138145, 138146, 138147, 138148, 138149, 138150, 138151, 138152, 138153, 138154, 138155, 138156, 138157, 138158, 138159, 138160, 138161, 138162, 138163, 138164, 138165, 138166, 138167, 138168, 138169, 138170, 138171, 138172, 138173, 138174, 138175, 138176, 138177, 138178, 138179, 138180, 138181, 138182, 138183, 138184, 138185, 138186, 138187, 138188, 138189, 138190, 138191, 138192, 138193, 138194, 138195, 138196, 138197, 138198, 138199, 138200, 138915, 138916, 138917, 138918, 138919, 138920, 138921, 138922, 138923, 138924, 138925, 138926, 138927, 138928, 138929, 138930, 138931, 138932, 138933, 138934, 138935, 138936, 138937, 138938, 138939, 138940, 138941, 138942, 138943, 138944, 138945, 138946, 138947, 138948, 138949, 138950, 138951, 138952, 138953, 138954, 138955, 138956, 138957, 138958, 138959, 138960, 138961, 138962, 138963, 138964, 138965, 138966, 138967, 138968, 138969, 138970, 138971, 138972, 138973, 138974, 138975, 138976, 138977, 138978, 138979, 138980, 138981, 138982, 138983, 138984, 138985, 138986, 138987, 138988, 138989, 138990, 138991, 138992, 138993, 138994, 138995, 138996, 138997, 138998, 138999, 139000, 139001, 139002, 139003, 139004, 139005, 139006, 139007, 139008, 139009, 139010, 139011, 139012, 139013, 139014, 139015, 139016, 139017, 139018, 139019, 139020, 139021, 139022, 139023, 139024, 139025, 139026, 139027, 139028, 139029, 139030, 139031, 139032, 139033, 139034, 139035, 139036, 139037, 139038, 139039, 140757, 140758, 140759, 140760, 140761, 140762, 140763, 140764, 140765, 140766, 140767, 140768, 140769, 140770, 140771, 140772, 140773, 140774, 140775, 140776, 140799, 140800, 140801, 140802, 140803, 140804, 140805, 140806, 140807, 140808, 140809, 140810, 140811, 140812, 140813, 140814, 140815, 140816, 140817, 140818, 140819, 140820, 140821, 140822, 140823, 140824, 140825, 140826, 140827, 140828, 140829, 140830, 140831, 140832, 140833, 140834, 140835, 140836, 140837, 140838, 140839, 140840, 140841, 140842, 140843, 140844, 140845, 140846, 140847, 140848, 140849, 140850, 140851, 141582, 141583, 141584, 141585, 141585, 141587, 141588, 141589, 141590, 141591, 141592, 141593, 141594, 141595, 141596, 141597, 141598, 141599, 141600, 141601, 141602, 141603, 141604, 141605, 141606, 141607, 141608, 141609, 141610, 141611, 141612, 141613, 141614, 141615, 141616, 141617, 141618, 141619, 141620, 141621, 141622, 141623, 141624, 141625, 141626, 141627, 141628, 141629, 141630, 141631, 141632, 141633, 141634, 141635, 141636, 141637, 141638, 141639, 141640, 141641, 141642, 141643, 141644, 141645, 141646, 141647, 141648, 141649, 141650, 141651, 141652, 141653, 141654, 141655, 141656, 141657, 141658, 141659, 141660, 141661, 143205, 143206, 143207, 143208, 143209, 143210, 143211, 143212, 143213, 143214, 143215, 143216, 143217, 143218, 143219, 143220, 143221, 143222, 143223, 143224, 143225, 143226, 143227, 143228, 143229, 143230, 143231, 143232, 143233, 143234, 143235, 143236, 143237, 143238, 143239, 143240, 143241, 143242, 143243, 143244, 143245, 143246, 143247, 143248, 143249, 143250, 143251, 143252, 143253, 143254, 143255, 143256, 143257, 143258, 143259, 143260, 143261, 143262, 143263, 143264, 143265, 143266, 143267, 143268, 143269, 143270, 143271, 143272, 143273, 143274, 143275, 143276, 143277, 143278, 143279, 143280, 143281, 143282, 143283, 143284, 143285, 143286, 143287, 143288, 143289, 143290, 143291, 143292, 143293, 143294, 143295, 143296, 143297, 143298, 143299, 143300, 143301, 143302, 143303, 143304, 143306, 143307, 143308, 143309, 143310, 143311, 143312, 143313, 143314, 143315, 143316, 143318, 143319, 143320, 143321, 143322, 143323, 143324, 143325, 143326, 143327, 143328, 143329, 143330, 143331, 143332, 143333, 143334, 143335, 143336, 143337, 143338, 143339, 143340, 143341, 143342, 143343, 143344, 143345, 143346, 143347, 143348, 143349, 143350, 143351, 143352, 143353, 143354, 143355, 143356, 143357, 143358, 143359, 143360, 143361, 143362, 143363, 143364, 143365, 143366, 143367, 143368, 143369, 143370, 143371, 143372, 144398, 144399, 144400, 144401, 144402, 144403, 144404, 144405, 144406, 144407, 144408, 144409, 144410, 144411, 144412, 144413, 144414, 144415, 144587, 144588, 144589, 144590, 144591, 144592, 144593, 144594, 144595, 144596, 144597, 144598, 144599, 144600, 144601, 144602, 144603, 144604, 144605, 144606, 144607, 144608, 144609, 144610, 144611, 144612, 144613, 144614, 144616, 144617, 144618, 144619, 144620, 144621, 144622, 144623, 144624, 144625, 144626, 144627, 144628, 144629, 144630, 144631, 144632, 144633, 144634, 144635, 144636, 144637, 144638, 144639, 144640, 144641, 144642, 144643, 144644, 144645, 144646, 144647, 144648, 144649, 144650, 144651, 144652, 144653, 144654, 144655, 144656, 144657, 144658, 144659, 144660, 144661, 144662, 144663, 144664, 144665, 144666, 144667, 144668, 144669, 144670, 144671, 144672, 144673, 144674, 144675, 144676, 144677, 144678, 144679, 144680, 144681, 144682, 144683, 144684, 144685, 144686, 144687, 144688, 144689, 144690, 144691, 144692, 144693, 144694, 144695, 144696, 144697, 144698, 144699, 144700, 144701, 144702, 144703, 144704, 144705, 144706, 144707, 144708, 144709, 144710, 144711, 144712, 144713, 144714, 144715, 144717, 144718, 144719, 144720, 144721, 144722, 144723, 144724, 144725, 145262, 145265, 145270, 145274, 145276, 145278, 145282, 145286, 145289, 145290, 145295, 145297, 145298, 145299, 145301, 145303, 145305, 145308, 145310, 145314, 145317, 145319, 145320, 145321, 145324, 145326, 145329, 145332, 145333, 145337, 145342, 145343, 145348, 145351,

Model No. (# of cylinders)	Serial Nos.
	145355, 145360, 145361, 145364, 145365, 145371, 145372, 145375, 145380, 145381, 145383, 145386, 145387, 145388, 145389, 145394, 145395, 145396, 145397, 145398, 145400, 145401, 145402, 145403, 145405, 145407, 145408, 145410, 145411, 145412, 145413, 145416, 145418, 145419, 145420, 145422, 145424, 145425, 145430, 145431, 145432, 145433, 145434, 146104, 146108, 146109, 146110, 146114, 146116, 146120, 146121, 146122, 146127, 146128, 146132, 146134, 146138, 146139, 146140, 146144, 146145, 146146, 146148, 146151, 146152, 146156, 146341, 146352, 146362, 146373, 146374, 146378, 146380, 146386, 146390, 146391, 146392, 146398, 146402, 146403, 146405, 146406, 146408, 146409
L45M–34 MSA (42)	200900, 200901, 200902, 200903, 200904, 200905, 200906, 200907, 200908, 200909, 200910, 200911, 200912, 200913, 200914, 200915, 200916, 200917, 200918, 200919, 200920, 200921, 200922, 200923, 200924, 200925, 200926, 200927, 200928, 200929, 200930, 200931, 200932, 200933, 200934, 200935, 200936, 200937, 200938, 200939, 200940, 200941
L45S–1 MSA (13)	112178, 112193, 112212, 114034, 114035, 114042, 114043, 114045, 114048, 114051, 114052, 114055, 114056
L65G–16 MSA (101)	158662, 158663, 158664, 158665, 158666, 158667, 158668, 158669, 158670, 158673, 158674, 158675, 158677, 158678, 158679, 158680, 158681, 158682, 158683, 158684, 158685, 158686, 158687, 158688, 158689, 158690, 158691, 158692, 158693, 158694, 158695, 158696, 158697, 158698, 158699, 158700, 158865, 158866, 158867, 158868, 158869, 158870, 158871, 158872, 158873, 158874, 158875, 158876, 158877, 158878, 158880, 158881, 158882, 158883, 158884, 158885, 158886, 158887, 158888, 158889, 158890, 158891, 158892, 158894, 158895, 158896, 158897, 158899, 158900, 158901, 158902, 158903, 158904, 158905, 158906, 158907, 158908, 158909, 158911, 158912, 158913, 158914, 158915, 158916, 158918, 158919, 158920, 158921, 158922, 158923, 158924, 159486, 159487, 159495, 159513, 159551, 159558, 159561, 159564, 159585, 159599
L65G–1 SURV (4)	201492, 201503, 201515, 201526

Model No. (# of cylinders)	Serial Nos.
L65G–2 SCOTT (757)	216018, 216019, 216020, 216021, 216022, 216023, 216024, 216025, 216026, 216027, 216028, 216029, 216030, 216031, 216032, 216033, 216034, 216035, 216036, 216037, 216038, 216039, 216040, 216041, 216042, 216043, 216044, 216045, 216046, 216047, 216800, 216801, 216802, 216803, 216804, 216805, 216806, 216807, 216808, 216809, 216810, 216811, 216812, 216813, 216814, 216815, 216816, 216817, 216818, 216819, 216820, 216821, 216822, 216823, 216824, 216825, 216826, 216827, 216828, 216829, 216830, 216831, 216832, 216833, 216834, 216835, 216836, 216837, 216838, 216839, 216840, 216841, 216842, 217753, 217754, 217755, 217756, 217757, 217758, 217759, 217760, 217761, 217762, 217763, 217764, 217765, 217766, 217767, 217768, 217769, 217770, 217771, 217772, 217773, 217774, 217775, 217777, 217778, 217779, 217780, 217781, 217782, 217864, 217865, 217866, 217867, 217868, 217869, 217870, 217871, 217872, 217873, 217874, 217875, 217876, 217877, 217878, 217879, 217880, 217881, 217882, 217883, 217884, 217885, 217886, 217887, 217888, 217889, 217890, 217891, 217892, 217893, 217894, 217895, 217896, 217897, 217898, 217899, 217900, 217901, 217902, 217903, 217904, 217905, 217906, 217907, 217908, 217909, 217910, 217911, 217912, 217913, 217914, 217915, 217916, 217917, 217918, 217919, 217920, 217921, 217922, 217923, 217924, 217925, 217926, 217927, 217928, 217929, 218072, 218073, 218074, 218075, 218076, 218077, 218078, 218079, 218080, 218081, 218082, 218083, 218084, 218085, 218086, 218087, 218088, 218089, 218090, 218091, 218092, 218093, 218094, 218095, 218096, 218097, 218098, 218099, 218100, 218101, 218102, 218103, 218104, 219936, 219937, 219938, 219939, 219940, 219941, 219942, 219943, 219944, 219945, 219946, 219947, 219948, 219949, 219950, 219951, 219952, 219953, 219954, 219955, 219956, 219957, 219958, 219959, 219960, 219961, 219962, 219963, 219964, 219965, 219966, 219967, 219968, 219969, 219970, 219971, 219972, 219973, 219974, 219975, 219976, 219977, 219978, 219979, 219980, 219981, 219982, 219983, 219984, 219985, 219986, 219987, 219988, 219989, 219990, 219991, 219992, 219993, 219994, 219995, 219996, 219997, 219998, 219999, 220000, 220001, 220002, 220003, 220004, 220005, 220006, 220007, 220008, 220009, 220010, 220011, 220012, 220013, 220014, 220015, 220016, 220017, 220018, 220019, 220020, 220021, 220022, 220023, 220024, 220025, 220026, 220027, 220028, 220029, 220030, 220031, 220032, 220033, 220034, 220035, 220036, 220037, 220038, 220039, 220040, 220041, 220042, 220043, 220044, 220045, 220046, 220047, 220048, 220049, 220050, 220051, 220052, 220053, 220054, 220055, 220056, 220057, 220058, 220059, 220060, 220061, 220147, 220148, 220149, 220150, 220151, 220153, 220154, 220155, 220156, 220157, 220158, 220159, 220160, 220161, 220162, 220163, 220164, 220165, 220166, 220167, 220168, 220169, 220170, 220171, 220172, 220173, 220174, 220175, 220176, 220177, 220178, 220179, 220180, 220181, 220182, 220183, 220184, 220185, 220187, 220188, 220225, 220226, 220227, 220228, 220229, 220230, 220231, 220232, 220234, 220235, 220236, 220237, 220238, 220239, 220240, 220241, 220242, 220243, 220244, 220245, 220246, 220247, 220248, 220249, 220250, 220251, 220252, 220253, 220254, 220255, 220256, 220257, 220258, 220259, 220260, 220261, 220262, 220263, 220264, 220266, 220270, 220271, 220272, 220273, 220277, 220278, 220279, 220283, 220284, 220285, 220289, 220290, 220291, 220295, 220296, 220297, 220298, 220299, 220301, 220302, 220303, 220305, 220307, 220435, 220436, 220437, 220438, 220439, 220440, 220441, 220442, 220443, 220444, 220445, 220446, 220447, 220448, 220449, 220450, 220451, 220452, 220453, 220454, 220455, 220456, 220457, 220458, 220459, 220460, 220461, 220462, 220463, 220464, 220465, 220466, 220467, 220468, 220469, 220470, 220471, 220472, 220473, 220474, 220475, 220476, 220477, 220478, 220479, 220480, 220481, 220482, 220483, 220484, 220485, 220486, 220487, 220488, 220489, 220490, 220492, 220493, 220494, 220495, 220496, 220497, 220498, 220499, 220500, 220501, 220502, 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225887, 225890, 225895, 225905, 225908, 225932, 225935, 226137, 226159, 226186
L65G–81 MSA (22)	301100, 301101, 301102, 301103, 301104, 301105, 301106, 301107, 301108, 301109, 301110, 301111, 301112, 301113, 301114, 301115, 301116, 301117, 301118, 301119, 301120, 301121
L65G–88 SCOTT (42)	301752, 301753, 301754, 301755, 301756, 301757, 301758, 301759, 301760, 301761, 301762, 301763, 301764, 301765, 301766, 301767, 301768, 301769, 301770, 301771, 301772, 301773, 301774, 301775, 301776, 301777, 301778, 301779, 301780, 301781, 301782, 301783, 301784, 301785, 301786, 301787, 301788, 301789, 301790, 301791, 301792, 301793

Model No. (# of cylinders)	Serial Nos.
L65M–1 MSA (114)	57126, 57127, 57128, 57129, 57130, 57131, 57132, 57133, 57134, 57135, 57136, 57137, 57139, 57140, 57141, 57143, 57145, 57146, 57148, 57149, 57150, 57151, 57152, 57153, 57154, 57155, 57156, 57158, 57159, 57161, 57162, 57163, 57164, 57165, 57291, 57292, 57293, 57295, 57296, 57297, 57298, 57299, 57300, 57302, 57303, 57305, 57307, 57308, 57309, 57310, 57311, 57312, 57313, 57314, 57315, 57316, 57317, 57319, 57320, 57321, 57323, 57324, 57326, 57327, 57328, 57329, 57330, 57332, 57333, 57334, 57335, 57336, 57337, 57338, 57340, 57341, 57342, 57343, 57344, 57345, 57346, 57347, 57348, 57349, 57350, 57351, 57352, 57354, 57355, 57356, 57357, 57358, 57359, 57360, 57361, 57362, 57363, 57364, 57366, 57511, 57512, 57518, 57520, 57524, 57526, 57527, 57528, 57531, 57533, 57535, 57537, 57546, 57697, 57698
L65M–4 MSA (3)	61425, 61426, 61427
L65M–51 SCOTT (81)	62406, 62407, 62408, 62409, 62410, 62411, 62412, 62413, 62414, 62415, 62416, 62417, 62418, 62419, 62420, 62421, 62422, 62423, 62424, 62425, 62426, 62427, 62428, 62429, 62430, 62431, 62432, 62433, 62434, 62435, 62436, 62437, 62438, 62439, 62440, 62441, 62442, 62443, 62444, 62445, 62446, 62447, 62490, 62491, 62492, 62493, 62494, 62495, 62496, 62497, 62498, 62499, 62500, 62501, 62502, 62503, 62504, 62505, 62506, 62507, 62508, 62509, 62510, 62511, 62512, 62513, 62514, 62515, 62516, 62517, 62518, 62519, 62520, 62521, 62522, 62523, 62524, 62525, 62526, 62527, 62528
L65M–5 SCOTT (35)	62725, 62726, 62727, 62728, 62729, 62730, 62731, 62732, 62733, 62734, 62735, 62736, 62737, 62738, 62739, 62740, 62741, 62742, 62743, 62744, 62745, 62746, 62747, 62748, 62749, 62750, 62751, 62752, 62753, 62754, 62755, 62756, 62757, 62758, 62759
L65M–5 MSA (14)	62800, 62801, 62802, 62806, 62807, 62808, 62809, 62812, 62813, 62814, 62815, 62816, 62817, 62818
L87G–2 SCOTT (322)	149667, 149668, 149669, 149670, 149671, 149672, 149673, 149674, 149675, 149676, 149677, 149678, 149679, 149680, 149681, 149682, 149683, 149684, 149685, 149686, 149687, 149688, 149689, 149690, 149691, 149692, 149693, 149694, 149695, 149696, 149697, 149698, 149699, 149700, 149701, 149702, 149703, 149704, 149705, 149706, 149708, 149709, 149710, 149711, 149712, 149713, 149714, 149715, 149716, 149717, 149718, 149719, 149720, 149721, 149722, 149723, 149724, 149726, 149727, 149728, 149729, 149730, 149731, 149732, 149733, 149801, 149802, 149803, 149804, 149805, 149806, 149807, 149808, 149809, 149810, 149811, 149812, 149813, 149814, 149815, 149816, 149818, 149819, 149820, 149821, 149822, 149823, 149824, 149825, 149826, 149827, 149828, 149829, 149830, 149832, 149833, 149834, 149835, 149836, 149837, 149838, 149839, 149840, 149841, 149842, 149843, 149844, 149845, 149846, 149847, 149848, 149849, 149851, 149852, 149853, 149854, 149855, 149856, 149857, 149858, 149859, 149860, 149861, 149862, 149863, 149864, 149865, 149866, 149869, 149870, 149871, 149872, 149873, 149875, 149876, 149877, 149879, 149880, 149881, 150230, 150231, 150232, 150233, 150234, 150235, 150236, 150237, 150238, 150239, 150240, 150241, 150242, 150243, 150244, 150245, 150246, 150247, 150248, 150249, 150250, 150251, 150252, 150253, 150254, 150255, 150256, 150257, 150258, 150259, 150260, 150261, 150262, 150263, 150264, 150265, 150266, 150267, 151330, 151331, 151332, 151334, 151335, 151336, 151337, 151338, 151339, 151341, 151342, 151343, 151344, 151345, 151346, 151349, 151350, 151353, 151355, 151356, 151357, 151358, 151359, 151738, 151739, 151740, 151742, 151744, 151745, 151746, 151749, 151750, 151751, 151752, 151753, 151754, 151756, 152870, 152871, 152872, 152873, 152874, 152875, 152876, 152877, 152878, 152879, 152880, 152881, 152882, 152883, 152884, 152885, 152886, 152887, 152888, 152889, 152890, 152891, 152892, 152893, 152894, 152895, 152896, 152897, 152898, 152899, 152900, 152901, 152902, 152903, 152904, 152905, 153421, 153425, 153427, 153433, 153437, 153438, 153444, 153445, 153449, 153450, 153461, 153462, 153469, 153474, 153475, 153482, 153484, 153494, 153905, 153909, 153912, 153915, 153919, 153923, 153924, 153930, 153935, 153937, 153938, 153941, 153945, 153946, 153947, 153948, 153952, 153955, 153956, 153957, 153958, 153960, 153961, 153963, 153964, 153966, 153967, 153968, 153970, 153971, 153973, 153974, 153976, 153977, 153984, 153990, 153996, 153998, 154009, 154013, 154022, 154025, 154027, 154047, 154064, 154068, 154070, 154071, 154080, 154083, 154089, 154090, 154095, 154100
L87G–70 SCOTT (271)	170007, 170008, 170009, 170010, 170011, 170012, 170013, 170014, 170015, 170016, 170017, 170018, 170019, 170020, 170021, 170022, 170023, 170024, 170025, 170026, 170027, 170028, 170029, 170030, 170031, 170032, 170033, 170034, 170035, 170036, 170037, 170038, 170039, 170040, 170041, 170042, 170043, 170044, 170045, 170046, 170047, 170048, 170049, 170050, 170051, 170052, 170053, 170054, 170055, 170056, 170057, 170058, 170059, 170060, 170061, 170062, 170063, 170064, 170065, 170066, 170067, 170068, 170069, 170070, 170071, 170072, 170073, 170074, 170075, 170076, 170077, 170078, 170079, 170080, 170081, 170123, 170124, 170125, 170126, 170127, 170128, 170129, 170130, 170131, 170132, 170133, 170134, 170135, 170136, 170137, 170138, 170139, 170140, 170141, 170142, 170143, 170144, 170145, 170146, 170147, 170148, 170149, 170150, 170151, 170152, 170153, 170154, 170155, 170156, 170157, 170158, 170159, 170160, 170161, 170162, 170163, 170164, 170165, 170166, 170167, 170168, 170169, 170170, 170171, 170172, 170173, 170174, 170175, 170176, 170177, 170178, 170179, 170180, 170181, 170182, 170183, 170184, 170185, 170186, 170187, 170188, 170189, 170190, 170191, 170192, 170193, 170194, 170195, 170196, 170197, 170198, 170200, 170201, 170202, 170203, 170204, 170205, 170206, 170207, 170208, 170209, 170210, 170211, 170212, 170213, 170214, 170215, 170216, 170217, 170218, 170219, 170220, 170221, 170222, 170223, 170224, 170225, 170226, 170227, 170228, 170229, 170230, 170231, 170232, 170233, 170234, 170235, 170236, 170237, 170238, 170239, 170240, 170241, 170242, 170243, 170244, 170245, 170246, 170247, 170248, 170249, 170335, 170336, 170337, 170338, 170339, 170340, 170341, 170342, 170343, 170344, 170345, 170346, 170347, 170348, 170349, 170350, 170351, 170352, 170353, 170354, 170355, 170356, 170357, 170358, 170359, 170360, 170361, 170362, 170363, 170364, 170365, 170366, 170367, 170368, 170369, 170370, 170371, 170372, 170373, 170374, 170375, 170376, 170377, 170378, 170379, 170380, 170381, 170382, 170383, 170384, 170385, 170386, 170387, 170388, 170389, 170390, 170391, 170392, 170393, 170394, 170395, 170396, 170397, 170398, 170399, 170400, 170401, 170402, 170403, 170404

Model No. (# of cylinders)	Serial Nos.
L87G–71 SCOTT (76)	171000, 171001, 171002, 171003, 171004, 171005, 171006, 171007, 171008, 171009, 171010, 171011, 171012, 171013, 171014, 171015, 171016, 171017, 171018, 171019, 171020, 171021, 171022, 171023, 171024, 171025, 171026, 171027, 171028, 171029, 171030, 171031, 171032, 171033, 171034, 171035, 171036, 171037, 171038, 171039, 171040, 171041, 171042, 171043, 171044, 171045, 171046, 171047, 171048, 171049, 171050, 171051, 171052, 171053, 171054, 171055, 171056, 171057, 171058, 171059, 171060, 171061, 171062, 171063, 171064, 171065, 171066, 171067, 171068, 171069, 171070, 171071, 171072, 171073, 171074, 171075
L87G–73 SCOTT (52)	173000, 173001, 173002, 173003, 173004, 173005, 173006, 173007, 173008, 173009, 173010, 173011, 173012, 173013, 173014, 173015, 173016, 173017, 173018, 173019, 173020, 173021, 173022, 173023, 173024, 173025, 173026, 173027, 173028, 173029, 173030, 173031, 173032, 173033, 173034, 173035, 173036, 173037, 173038, 173039, 173040, 173111, 173112, 173113, 173114, 173115, 173116, 173117, 173118, 173119, 173120, 173121
L87G–74 SCOTT (57)	174064, 174065, 174066, 174067, 174068, 174069, 174070, 174071, 174072, 174073, 174074, 174075, 174076, 174077, 174078, 174079, 174080, 174081, 174082, 174083, 174084, 174085, 174086, 174087, 174088, 174089, 174090, 174091, 174092, 174093, 174094, 174095, 174096, 174097, 174098, 174099, 174100, 174101, 174102, 174103, 174105, 174106, 174107, 174108, 174109, 174110, 174111, 174112, 174113, 174114, 174115, 174116, 174117, 174118, 174119, 174120, 174121
L87G–75 SCOTT (50)	175000, 175001, 175002, 175003, 175004, 175005, 175006, 175007, 175008, 175009, 175010, 175011, 175012, 175013, 175014, 175015, 175016, 175017, 175018, 175019, 175020, 175021, 175022, 175023, 175024, 175025, 175026, 175027, 175028, 175029, 175030, 175031, 175032, 175033, 175034, 175035, 175036, 175037, 175038, 175039, 175040, 175041, 175042, 175043, 175044, 175045, 175046, 175047, 175048, 175049
M15B–1 DRAGER (16)	2570, 2571, 2572, 2577, 2578, 2580, 2595, 2605, 2611, 2612, 2618, 2619, 2623, 2624, 2629, 2630
P07A–4 PMI (105)	31650, 31651, 31652, 31653, 31654, 31655, 31656, 31657, 31658, 31659, 31660, 31661, 31662, 31663, 31664, 31665, 31666, 31667, 31668, 31669, 31670, 31671, 31672, 31673, 31674, 31675, 31676, 31677, 31678, 31679, 31680, 31681, 31682, 31683, 31684, 31685, 31686, 31687, 31688, 31689, 31690, 31691, 31692, 31693, 31694, 31695, 31696, 31697, 31698, 31699, 31700, 31701, 31702, 31703, 31704, 31705, 31706, 31707, 31708, 31709, 31710, 31711, 31712, 31713, 31714, 31715, 31716, 31717, 31718, 31719, 31720, 31721, 31722, 31723, 31724, 31725, 31726, 31727, 31728, 31729, 31730, 31731, 31732, 31733, 31734, 31735, 31736, 31737, 31738, 31739, 31740, 31741, 31742, 31743, 31744, 31745, 31746, 31747, 31748, 31749, 31750, 31751, 31752, 31753, 31754
P08F–3 PMI (210)	100234, 100235, 100236, 100237, 100238, 100239, 100240, 100241, 100242, 100243, 100244, 100246, 100247, 100248, 100249, 100250, 100251, 100252, 100253, 100254, 100255, 100256, 100258, 100259, 100260, 100261, 100262, 100263, 100264, 100265, 100266, 100267, 100268, 100269, 100270, 100271, 100272, 100273, 100274, 100275, 100276, 100514, 100515, 100517, 100519, 100520, 100521, 100522, 100523, 100525, 100527, 100528, 100529, 100530, 100531, 100532, 100534, 100535, 100536, 100537, 100538, 100539, 100540, 100541, 100542, 100543, 100546, 100547, 100548, 100550, 100551, 100552, 100553, 100554, 100555, 100556, 100557, 100558, 100559, 100560, 100561, 100562, 100563, 100564, 100565, 100566, 100567, 100568, 100569, 100570, 100571, 100572, 100573, 100574, 100575, 100576, 100577, 100578, 100579, 100580, 100581, 100582, 100583, 100584, 100585, 100586, 100587, 100588, 100589, 100590, 100591, 100592, 100593, 100594, 100595, 100597, 100598, 100599, 100600, 100601, 100602, 100603, 100604, 100605, 100606, 100607, 100608, 100609, 100610, 100611, 100612, 100613, 100614, 100616, 100617, 100618, 100619, 100620, 100621, 100622, 100623, 100624, 100625, 100626, 100627, 100628, 100629, 100630, 100631, 100632, 100633, 100634, 100635, 100636, 100637, 100638, 100639, 100640, 100641, 100642, 100643, 100644, 100645, 100646, 100647, 100649, 100650, 100651, 100652, 100653, 100654, 100655, 100656, 100657, 103005, 103016, 103018, 103026, 103028, 103045, 103052, 103055, 103056, 103067, 103069, 103070, 103074, 103120, 103180, 103219, 103227, 103234, 103261, 103271, 103290, 103310, 103335, 103342, 103391, 103399, 103412, 103563, 103571, 103572, 103573, 103615, 103626, 103665, 103666, 103675
P11F–2 PMI (2)	123248, 123249
P12A–2 PMI (11)	21974, 21976, 21977, 21980, 21981, 21985, 21986, 21992, 21993, 21995, 22078
T109A–1 GOODR (37)	6565, 6566, 6567, 6568, 6569, 6570, 6571, 6572, 6573, 6574, 6575, 6576, 6577, 6578, 6692, 6693, 6694, 6695, 6696, 6697, 6699, 6700, 6701, 6702, 6703, 6704, 6705, 6706, 6707, 6708, 6709, 6710, 6711, 6712, 6713, 6714, 6715
T112A–1 GOODR (25)	1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646
T123–1 GOODR (53)	1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 2504, 2505, 2506, 2507, 2508
Total Number (3,858).	

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

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

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BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket Nos. PHMSA–98–4470, PHMSA–2004–18938, and PHMSA–2004–18584]

Pipeline Safety: Meetings of the Pipeline Safety Standards Advisory Committees and Two Public Workshops

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of advisory committee meetings and two workshops.

SUMMARY: This notice announces public meetings of PHMSA's Technical Pipeline Safety Standards Committee (TPSSC) and Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The Committees will discuss regulatory issues and vote on two rulemaking proposals: Integrity management program changes and clarifications, and design and construction standards to reduce internal corrosion in gas transmission pipelines. In conjunction with the advisory committee meetings, PHMSA will hold two public workshops.

PHMSA will hold a half day public workshop on Hazardous Liquid Low Stress Pipelines to solicit comments on a risk-based approach to protecting unusually sensitive areas from risks associated with low stress lines. PHMSA also will conduct a public workshop to discuss the effectiveness of pipeline control room operations and to obtain comments on ways to enhance the effectiveness of pipeline control room operations and on findings from the Controller Certification Project (CCERT).

DATES AND TIMES: PHMSA will hold advisory committee meetings and public workshops on June 26–28, 2006. The dates and times are:

- Monday, June 26 from 1 p.m. to 5 p.m.—THLPSSC and Public Workshop on Hazardous Liquid Low Stress Pipelines.
- Tuesday, June 27 from 8 a.m. to 5 p.m.—THLPSSC/TPSSC Public Workshop on Effectiveness of Pipeline Control Room Operations.
- Wednesday, June 28 from 8 a.m. to 9 a.m.—THLPSSC Meeting to vote on the NPRM to address integrity management modifications.
- Wednesday, June 28 from 9:30 a.m. to 4:30 p.m.—Joint meetings of the THLPSSC and TPSSC.
- Wednesday, June 28 from 5 p.m. to 6 p.m.—TPSSC meeting to vote on the NPRM to address internal corrosion in gas transmission pipelines.

ADDRESSES: The meetings will be at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, Virginia, 22314. Telephone: 1–703–837–0440, Fax 1–703–837–0454.

FOR FURTHER INFORMATION CONTACT:

- *Technical Advisory Committee Meetings:* Cheryl Whetsel (202) 366–4431, *cheryl.whetsel@dot.gov*;
- *Hazardous Liquid Low Stress Lines Public Workshop:* Dewitt Burdeaux (405) 954–7220, *dewitt.burdeaux@dot.gov* or Chris Hoidal (720) 963–3171, *chris.hoidal@dot.gov*; and
- *Effectiveness of Pipeline Control Room Operations Public Workshop:* Byron Coy (609) 989–2180, *byron.coy@dot.gov*.

SUPPLEMENTARY INFORMATION:

General Meeting Details

Attendees staying at the hotel must make reservations by Friday, May 26. The phone number for reservations at the hotel is 1–800–HILTONS (445–8667). The hotel will give priority to the Committee members and State Pipeline Safety Representatives for rooms blocked under ''DOT Technical Advisory Committee Meetings.''

PHMSA plans to hold panel discussions during the public workshops. Individuals interested in participating as a panelist/commenter during the workshops should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** Members of the public may make short statements on the topics under discussion during the advisory committee sessions. Anyone wishing to make an oral statement should contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT** by June 9, with the topic and the estimated time needed to present. The presiding officer at each meeting may deny a request to present an oral statement based on time availability.

You may send written comments by mail or deliver them to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may send written comments to the docket electronically by logging onto the following Internet Web address: *http://dms.dot.gov*. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number PHMSA–98–4470 for advisory committee issues; PHMSA–2004–18938 for hazardous liquid low stress line issues; and PHMSA–2004–18584 for controller certification issues. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard. These dockets will remain open pending the completion of a rulemaking.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Cheryl Whetsel at (202) 366–4431 by June 2.

Background of Technical Advisory Committees

The TPSSC and the THLPSSC are statutorily mandated advisory committees advising PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas and hazardous liquid pipelines. These advisory committees are established under section 9(c) (App. 2) of the Federal Advisory Committee Act (Pub. L. 92–463) (5 U.S.C. App. 1). The committees consist of 15 members—five each representing government, industry, and the public. The TPSSC and the THLPSSC determine reasonableness, cost-effectiveness, and practicability of PHMSA's regulatory initiatives.

Federal law requires PHMSA to submit cost-benefit analysis and risk assessment information on each proposed safety standard to the advisory committees. The committees evaluate the merits of the data and methods used within the analysis, and when fitting, provide recommendations about the cost-benefit analysis.

Hazardous Liquid Low Stress Line Public Workshop

June 26 (1 p.m. until 5 p.m.)

On Monday, June 26 in conjunction with the THLPSSC meeting, PHMSA will hold a half day public workshop on

protecting unusually sensitive areas from hazardous liquid low stress lines.

Background on Regulation of Hazardous Liquid Low Stress Lines

The original safety regulations for hazardous liquid pipelines did not apply to low stress pipelines. Because of their low operating pressures and minimal accident history, the agency thought low stress hazardous liquid pipelines posed little risk to public safety. Following a prominent accident in 1990 involving the spill of about 500,000 gallons of heating oil from an underwater Exxon pipeline in Arthur Kill Channel in New York, PHMSA began rulemaking on hazardous liquid low stress lines. Further, in the Pipeline Safety Act of 1992, Congress provided guidance for the rulemaking by limiting the authority to exempt a pipeline from regulation solely because it operated at a low stress level.

In 1990, PHMSA published an advance notice of proposed rulemaking (ANPRM) on low stress pipelines. (55 FR 45822; October 31, 1990.) In the ANPRM, PHMSA sought information about the costs and benefits of regulating low stress lines. The analysis of the data received in response to the ANPRM showed regulation of all low stress pipelines could impose costs disproportionate to benefits. PHMSA, therefore, focused on those low stress pipelines that posed a higher risk to people and the environment. The risk factors identified were the commodity in transportation and the location of the pipeline.

In 1993, PHMSA published an NPRM proposing to apply parts 195 and 199 to low stress transmission pipelines that transport highly volatile liquids, traverse a populated area or traverse a navigable waterway (58 FR 12213; March 3, 2003). In 1994, PHMSA committed to consider regulating rural low stress lines in a future rulemaking based on locations and other risk factors. The agency said that it was developing a better concept of what constitutes an environmentally sensitive area for purposes of pipeline regulation and this would provide the groundwork for the future rulemaking on rural low stress lines. PHMSA said it needed the time to learn the extent to which low stress pipeline spills affect environmentally sensitive areas. It believed the definition used in the part 194 (Response Plans for Onshore Oil Pipelines) was too broad for part 195.

In 2000, PHMSA issued a final rule to define unusually sensitive areas (USAs) (65 FR 246). In this rule, PHMSA noted its 1994 decision to defer regulating nonvolatile products in low stress pipelines in rural sensitive areas since there was not a definition. It further noted its intention to reconsider the issue once there was a sensitive area definition. In 2000, PHMSA defined protection of USAs for most hazardous liquid pipelines through its integrity management regulations. This meeting is a crucial step in gathering information needed to complete the protection of USAs from risks of spills from hazardous liquid low stress lines.

PHMSA has gathered data from State agencies and industry and evaluated several accidents that involve hazardous liquid low stress lines. Based on its evaluation of data and comments received earlier on this issue, PHMSA would like to consider a risk-based approach to addressing unregulated hazardous liquid low stress lines. PHMSA would require operators of these lines to follow certain safety rules for design, construction, testing, and maximum operating pressure. It would also require these operators to protect the lines from corrosion and excavation damage, provide public education, operator qualification, and report accident and safety-related conditions.

Preliminary Agenda—Workshop Questions for Hazardous Liquid Low Stress Lines

During the public workshop, PHMSA plans to present its viewpoint and then hold panel discussions. The agency seeks comments on its risk-based approach to addressing unregulated low stress lines. In discussion of concepts, PHMSA asks interested parties to discuss the following agenda topics:

Criteria for Applicability of Regulation

PHMSA believes it should regulate any pipeline that affects USAs, including those not crossing a public domain.

- Should low stress lines that remain on leased property or low stress lines not crossing into a public domain be considered a transportation pipeline?
- Should PHMSA only regulate pipelines that intersect or could affect USAs?

Use of Buffer Zones

PHMSA is considering using the criteria in part 194 to determine whether a low stress line could affect a USA.

- In determining whether a low stress line could affect a USA, should PHMSA use criteria similar to the requirements in part 194 or are there other tried and tested criteria, such as buffer zones, we should consider?

Physical Pipeline Characteristics

PHMSA believes it may be appropriate to regulate pipelines containing a certain amount of product by volume.

- *Throughput:* What is the average daily throughput, and type of product transported?
- *Location:* Where are low stress lines geographically located?
- *Diameter:* What are the diameter ranges for pipelines transporting products through low stress pipelines other than gathering lines?

Safety Requirements

PHMSA believes that it may be appropriate to apply a limited subset of compliance activities, similar to those prescribed in part 192 for gas gathering lines.

- *Leak Detection:* Do hazardous liquid low stress line operators currently employ some type of leak detection techniques? If so, what techniques are used? What is an acceptable margin of error? Are margins determined daily?
- *Operator Qualification:* Should we apply Subpart N or a modified approach? If so, what should that modified approach be?
- *Maintenance:* Should federal regulations address preventative measures, such as the routine use of corrosion prevention and smart pigs which are capable of detecting corrosion? Do operators routinely run cleaning pigs on its low stress lines?
- *Implementation Timeframes:* Are 18-month through 2-year timeframes adequate for operators to address new construction, corrosion, operator qualification and excavation damage; to provide public education; and to report accident and safety-related conditions?

Costs/Benefits

PHMSA must address cost and benefits in developing all regulatory proposals. PHMSA is gathering cost data to justify a proposal.

- How many pipelines will be impacted?
- What is the mileage?
- What is the average length of those lines?
- What is the cost of bringing unregulated lines into compliance with part 195?

Effectiveness of Pipeline Control Room Management Public Workshop

June 27 (8 a.m.–5 p.m.)

In conjunction with the Joint Committee meetings, PHMSA will hold a public workshop on opportunities to improve the effectiveness of pipeline

control room operations. This workshop will provide the public and industry an opportunity to discuss options for effectiveness of pipeline control room operations and assessing management processes, human fatigue issues, qualification, and other programs affecting pipeline control.

Background of Controller Certification Pilot Program

In addressing the requirements in the Pipeline Safety Improvement Act (PSIA) of 2002, section 13(b), PHMSA conducted a Controller Certification Pilot Program (CCERT). The purpose of the pilot program was to: (1) Review training programs, qualification requirements, evaluation methods, evaluation criteria, success thresholds, and reevaluation intervals to determine their adequacy and thoroughness in the controller qualification process; (2) evaluate the effectiveness of the practices and administrative processes currently used by operators in the qualification of controllers; (3) examine the thoroughness of operating procedures and practices used by controllers which impact safety and integrity; and (4) explore how these processes and evaluation criteria could be used to develop uniform protocols and acceptance criteria for the validation of pipeline operators' controller qualification processes. Despite differences between natural gas and hazardous liquid pipelines, PHMSA believes controllers for both types of pipelines require similar cognitive and analytical skills.

During the same period of time in which PHMSA was conducting the ongoing CCERT Project, the National Transportation Safety Board (NTSB) was conducting a separate study on hazardous liquid pipeline Supervisory Control and Data Acquisition (SCADA) systems (2002–2005). The NTSB study examined how pipeline companies use SCADA systems to monitor and record operating data and to evaluate the role of SCADA systems in leak detection. The impetus of the NTSB study was the number of hazardous liquid accidents the NTSB investigated in which leaks went undetected after the SCADA system indicated the leak. While the NTSB SCADA Safety Study specifically addresses hazardous liquid pipelines, they previously issued about 30 recommendations over the past 30 years either directly or indirectly related to SCADA systems involving both hazardous liquid and natural gas pipeline systems. The NTSB's SCADA Safety Study and the CCERT project yielded many similar findings. PHMSA identified some additional areas of concern. The recommendations from the NTSB's SCADA Safety Study are as follows:

- Require operators of hazardous liquid pipelines to follow the American Petroleum Institute's Recommended Practice 1165 [API RP 1165] for the use of graphics on the SCADA screens.
- Require pipeline companies to have a policy for the review/audit of alarms.
- Require controller training to include simulator or non-computerized simulations for controller recognition of abnormal operating conditions, in particular, leak events.
- Change the liquid accident reporting form (PHMSA F 7000–1) and require operators to provide data related to controller fatigue.
- Require operators to install computer-based leak detection systems on all lines unless engineering analysis determined that such a system is not necessary.

PHMSA plans to address the first four recommendations listed above within the CCERT Project. PHMSA plans to address the leak detection recommendation separately.

The NTSB previously recommended PHMSA address human factors by establishing scientifically based hours of service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements. The NTSB also recommended PHMSA assess the potential safety risks associated with rotating pipeline controller shifts and establish industry guidelines for the development and implementation of pipeline controller work schedules to reduce the likelihood of accidents attributable to controller fatigue. In response, PHMSA held a meeting on fatigue and issued Advisory Bulletin ADB–05–06, ''Countermeasures to Prevent Human Fatigue in the Control Room'' (70 FR 46917; August 11, 2005).

This workshop will provide information and promote discussion on the most critical factors emerging from the certification study project and the NTSB recommendations affecting controlling the operation of natural gas and hazardous liquid pipelines. Meetings with state pipeline regulators, pipeline operators, academia, members of the public, parallel industry representatives, vendors and simulator specialists to conduct analyses and evaluations help frame PHMSA's findings. PHMSA is preparing a Report to Congress summarizing its findings regarding pipeline controller training, qualification programs and validation techniques to address the PSIA 2002 section 13(b)(2). PHMSA plans to submit its findings to Congress by the end of the year.

In the workshop, PHMSA will first present pilot program initial findings. PHMSA will provide an opportunity to discuss these findings as a basis for potential future regulatory enhancements and other actions to provide further assurance about the effectiveness of pipeline control and the skills and qualifications of controllers. PHMSA is encouraging public participation on the path forward. PHMSA will want to discuss what follow-up action is needed for each topic—for example, regulation, consensus standard, or advisory.

Preliminary Meeting Agenda for CCERT Workshop

This workshop will focus on the topics listed below. PHMSA will provide a summary on the critical nature of each topic in validating the effectiveness of pipeline control room operations and controller programs, followed by panel discussions and an opportunity for interested parties to provide comments.

Shift Operations

The exchange of information between controllers at shift change is critical for the controller going on shift who needs to know about operating conditions that may directly impact pipeline safety. PHMSA believes operators should have formalized procedures to control shift rotation schedules and guide shift change-over practices.

- What role do shift change procedures have in averting the development of abnormal and emergency situations?
- Do existing shift rotation schedules, shift length, and hours of service protect against the onset of fatigue?

Effectiveness of Pipeline Control Room Operations

PHMSA believes operators need to provide clear direction regarding the controller's authority and responsibility to ensure prompt detection and appropriate response to abnormal and emergency operating conditions.

- Do operators clearly communicate authority and responsibility expectations to their controllers?

Fatigue

PHMSA believes operators should limit controller shifts and provide periodic training on fatigue issues to controllers.

- What should be done regarding controller work hour limitations?

• Should we be concerned about employees' non-work hours that contribute to fatigue?

• Should PHMSA modify its reporting criteria on accident causes to reflect controller issues? If so, what areas should we address?

Management of Change

PHMSA believes operators should establish programs to: Periodically audit field data points with SCADA displays; develop integration plans affecting controllers during acquisition and divestitures; ensure including consultation with controllers when considering pipeline hydraulic, SCADA, or configuration changes; and track expedient resolution of controller-oriented changes and repairs.

• When changes occur in the operating environment affecting controllers, how do we ensure those changes are fully addressed and conveyed to controllers?

Alarms and Event Displays

Alarms and event displays provide information on potential precursors or indicators of abnormal operating conditions. Controllers should clearly understand displayed information and what specific alarms and event displays indicate. PHMSA believes it is important for operators to routinely review alarms and event displays to identify the need for revisions to alarm and event management systems.

• How significant are alarm parameters, alarm management, and the periodic review of alarms to pipeline safety and integrity?

• What impacts do alarm descriptors, display parameters, and the use of color have on providing precise operational information to controllers?

Access Control

PHMSA believes operators should have measures in place to protect against unauthorized access to SCADA control consoles; configure SCADA systems for individual log-ins; and perform background checks on controllers.

• Are there additional measures needed to address controller room access to SCADA systems?

Qualification of Personnel

PHMSA believes simulators and tabletop exercises are valuable tools to help familiarize controllers with the hydraulic response of the pipeline system and improve their recognition of abnormal and emergency conditions. A controller's thorough knowledge of pipeline system hydraulic response is critical to recognizing abnormal operating condition development. PHMSA believes operators should incorporate tabletop exercises, and/or computerized simulations and field visits to enhance controller training.

• How can computer-based simulator training and tabletop exercises enhance controller skills?

• What are the benefits of training controllers on specific pipeline hydraulic parameters and response to various abnormal operating conditions?

• What value can controllers get from facility visits and site-specific emergency issues?

Regulating Operating Conditions

Incidents, accidents, safety-related condition reports and operator qualification inspections indicate the need for enhanced controller skills on prompt, appropriate response regarding the recognition of abnormal operating conditions and emergency conditions. Parallel industries have identified the need to develop training around combinations of abnormal operating conditions and operating experience. PHMSA believes operators should address abnormal operating conditions occurring frequently and in combinations.

• How can we better identify and train operators to handle abnormal operating events?

• What roles can operational events play in identifying emergency operating conditions?

• How do we plan for and identify multiple contributing causes/factors when incidents and accidents occur?

• What role do controllers have in reacting and responding to incidents/accidents?

Maintaining Personnel Qualifications

Operator qualification inspection summaries and CCERT industry review indicate operators frequently do not substantiate re-qualification intervals for controllers. Many operators' programs do not provide guidance to determine when a controller needs refresher training, needs more training, or needs to requalify after disqualification. PHMSA believes these attributes should be incorporated into operators' qualification programs.

• What process best serves to validate controllers' skills and knowledge?

• What forms of justification are adequate to substantiate requalification intervals?

• Should the operator qualification process include documentation of revocation and restoration criteria?

Monitoring Performance

PHMSA has determined that some operators configure SCADA systems to portray critical information using color alone without verifying the controllers' ability to perceive color. Similar circumstances may exist concerning eyesight and hearing. PHMSA believes that operators should periodically verify that controllers have adequate color perception, eyesight, and hearing.

• What practical techniques can be used to track ongoing performance and monitor for performance degradation over time?

• How would a pipeline operator determine and test for adequate color perception, eyesight, and hearing?

Path Forward

PHMSA believes these findings apply in varying degrees to both hazardous liquid and natural gas pipeline operators. The path forward may include some of the following options: Public workshop discussions, reinforcement of existing regulations, consensus standards development, advisory bulletins, revised inspection guidance, accident/incident form revisions, enhancements to PHMSA incident/accident inspector training, SCADA inspections, or rulemaking.

• Which of these recommendations should apply to both hazardous liquid and natural gas pipeline operators?

• What areas should we focus on in addressing the NTSB recommendations and CCERT Project findings?

• What findings need regulatory action, if any? Are there other types of actions needed, such as consensus standards or advisories?

The Technical Hazardous Liquid Pipeline Safety Standards Advisory Committee

Wednesday, June 28 (8 a.m. to 9 a.m.)

The THLPSSC will meet to discuss and vote on the NPRM, Integrity Management: Program Modifications and Clarifications (70 FR 74265; December 5, 2005). PHMSA proposes revisions to the current Pipeline Safety Regulations for Pipeline Integrity Management in High Consequence Areas. The revisions address a petition from the hazardous liquid pipeline industry. The proposed revisions are to: (1) Allow more flexibility in reassessment intervals for hazardous liquid pipelines by adding an eight-month window to the five-year time frame for operators to complete reassessment; and (2) require both hazardous liquid pipeline and transmission pipeline operators to notify PHMSA whenever they reduce pipeline pressure to make a repair and to provide reasons for pressure reduction. Another notification,

including reasons for repair delay, would occur when a pressure reduction exceeds 365 days. Also, PHMSA proposes to correct existing provisions for calculating a pressure reduction when making an immediate repair on a hazardous liquid pipeline. The proposed correction would allow operators to use another acceptable method to calculate reduced operating pressure when a specified formula is not applicable or results in a calculated pressure higher than operating pressure. Finally, PHMSA seeks the submittal of engineering analyses and technical data. These submittals are to provide the basis for modifying the required time periods for remediating certain conditions found during a hazardous liquid pipeline integrity assessment. PHMSA will use this data to evaluate the scope and scale of repair issues to develop an accurate basis for determining if any additional flexibility is needed in the repair schedules.

Joint Meetings of the Technical Hazardous Liquid Pipeline Safety Standards Committee and the Technical Pipelines Safety Standards Committee

Wednesday, June 28 (9:30 a.m. to 4:30 p.m.)

The THLPSSC and TPSSC will hold a joint session from 9:30 am. to 4:30 p.m. to discuss the following regulatory matters.

Preliminary Agenda for the Joint Meetings

The day's agenda includes these topics:

- Reauthorization of the Pipeline Safety Act—Discuss status.
- Data Improvement/Balance Scorecard—Discuss a variety of data quality improvements. Introduce the concept of a company performance scorecard to measure and manage company safety and compliance programs.
- Performance Measures/Metrics—Discuss continuing efforts to improve pipeline safety by concentrating performance measures on serious incidents as a natural outgrowth of integrity management.
- Maximum Allowable Operating Pressure—Discuss the waiver process criteria for reconsideration of the maximum allowable operating pressure of pipelines in certain class locations.
- Operator Qualification—Discuss the comments received from the public meeting on the subject held on December 15, 2005 (70 FR 62162). The meeting provided an opportunity to discuss progress on the operator qualification program and to help PHMSA prepare the Report to Congress and the potential the American Society of Mechanical Engineers consensus standard offers for strengthening operator qualification programs.
- Controller Certification Pilot Program—Provide a summary of the comprehensive review of existing controller qualification procedures and practices in industry and describe the recommendations drafted for inclusion in the draft report to Congress. Discuss NTSB recommendations on SCADA and human fatigue and report on solutions considered in preparation for the public workshop.
- Public Education (PANEL)—Discuss the PHMSA Public Education Policy Statement and the status of a national clearinghouse to review updated operator plans. Brief members on the status of the sensitive security information designation of the PHMSA National Pipeline Mapping System availability to the public. Discuss the Common Ground Alliances' status of the Dial 811 initiative and promote the success of the Regional Common Ground Alliances and the need to have one in every state.

Technical Pipeline Safety Standards Committee Meeting

Wednesday, June 28 (5 p.m. to 6 p.m.)

The TPSSC will meet from 5 p.m. to 6 p.m. to address the following two topics:

- Internal Corrosion—Discuss and vote on ''Design and Construction Standards to Reduce Internal Corrosion in Gas Transmission Pipelines'' (70 FR 74262; 12–15–05). This document proposes regulations on the control of internal corrosion when designing and constructing new and replaced gas transmission pipelines. The proposed rule would require an operator to take steps in design and construction to reduce the risk that liquids collecting within the pipeline could result in failures because of internal corrosion. These changes would ease steps an operator must take in operating and maintaining the pipeline to minimize internal corrosion.
- Gas Distribution-DIMP/Excess Flow Valves—Provide an update on the regulatory proposal and an update on Gas Pipeline Technology Committee guidance development.

PHMSA will post more detailed agendas and any additional information or changes on its Web page (*http://phmsa.dot.gov*) approximately 15 days before the meeting date.

Authority: 49 U.S.C. 60102, 60115.

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

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 06–4093 Filed 4–27–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket No. RITA–2005–23343]

Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of currently approved reporting requirements. Earlier, a **FEDERAL REGISTER** Notice with a 60-day comment period was published on February 3, 2006 (71 FR 5905). The agency did not receive any comments to its previous notice.

DATES: Written comments should be submitted by May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

Comments: Comments should be sent to OMB at the address that appears below and should identify the associated OMB Approval Number 2138–0016 and Docket Number RITA–2005–23343.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0016.

Title: Report of Extension of Credit to Political Candidates.

Form No.: 183.

Type of Review: Extension of a currently approved reporting requirement.

Respondents: Certificated air carriers.

Number of Respondents: 2 (Monthly Average).

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its

obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (e.g. airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 715–17th Street, NW., Washington, DC 20503, Attention RITA Desk Officer.

Comments are invited on whether the proposed retention of records is necessary for the proper performance of the functions of the Department of Transportation.

Issued in Washington, DC, on April 25, 2006.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E6–6511 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket No. RITA–2005–23342]

Agency Information Collection; Activity Under OMB Review; Part 249 Preservation of Records

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of currently approved record retention requirements. Earlier, a **Federal Register** Notice with a 60-day comment period was published on February 3, 2006 (71 FR 5903). The agency did not receive any comments to its previous notice.

DATES: Written comments should be submitted by May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

Comments: Comments should be sent to OMB at the address that appears below and should identify the associated OMB Approval Number 2138–0006 and Docket RITA–2005–23342.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0006.

Title: Preservation of Air Carrier Records—14 CFR Part 249 .

Form No.: None.

Type Of Review: Extension of a currently approved recordkeeping requirement.

Respondents: Certificated air carriers and charter operators.

Number of Respondents: 120 certificated air carriers. 300 charter operators.

Estimated Time per Response: 3 hours per certificated air carrier. 1 hour per charter operator.

Total Annual Burden: 660 hours.

Needs and Uses: Part 249 requires the retention of records such as: General and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and legers, subsidy records documenting underlying financial and statistical reports to DOT, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, the carrier may be required to retain the document for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that we ensure that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of the carrier submissions would be impaired, since the data could not be verified to the source on a test basis.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 715–17th Street, NW., Washington, DC 20503, Attention RITA Desk Officer.

Comments are invited on whether the proposed retention of records is necessary for the proper performance of the functions of the Department of Transportation.

Issued in Washington, DC, on April 25, 2006.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E6–6512 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket No.: RITA–2005–23755]

Agency Information Collection; Activity Under OMB Review; Passenger Origin-Destination Survey Report

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of currently approved reporting requirements. Earlier, a **Federal Register** Notice with a 60-day comment period was published on February 3, 2006 (71 FR 5904). The agency did not receive any comments to its previous notice.

DATES: Written comments should be submitted by May 31, 2006.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or E-MAIL *bernard.stankus@dot.gov*.

Comments: Comments should be sent to OMB at the address that appears below and should identify the associated OMB Number 2139–0001 and Docket Number RITA–2005–23755.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2139–0001.

Title: Passenger Origin-Destination Survey Report.

Form No.: None.

Type Of Review: Extension of a currently approved reporting requirement.

Respondents: Large certificated air carriers.

Number of Respondents: 32.

Total Annual Burden: 30,720 hours.

Needs and Uses: Survey data are used in monitoring the airline industry, negotiating international air agreements, selecting new international routes, selecting U.S. carriers to operate limited entry international routes, forecasting future traffic demands, and modeling the spread of contagious diseases from foreign countries.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 715–17th Street, NW., Washington, DC 20503, Attention RITA Desk Officer.

Comments are invited on whether the proposed retention of records is necessary for the proper performance of the functions of the Department of Transportation.

Issued in Washington, DC, on April 25, 2006.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. E6–6533 Filed 4–28–06; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 944–SS and Form 944–PR

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 944–SS, Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, and Form 944–PR, Planilla para la Declaracion ANNUAL de la Cotribucion Federal del Patrono.

DATES: Written comments should be received on or before June 30, 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: Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands and Form 944–PR, Planilla para la Declaracion ANNUAL de la Cotribucion Federal del Patrono.

OMB Number: 1545–2010.

Form Number: Form 944–SS and Form 944–PR.

Abstract: Form 944–SS and Form 944–PR are designed so the smallest employers (those whose annual liability for social security and Medicare taxes is $1,000 or less) will have to file and pay these taxes only once a year instead of every quarter.

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: 20,000.

Estimated Time Per Respondent: 9 hours 34 minutes.

Estimated Total Annual Burden Hours: 191,200.

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: April 24, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–6475 Filed 4–28–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 637 Questionnaires

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 Questionnaires A, B, C, D, E, F, H, I, J, K, M, Q, R, S, T, UP, UV, V, W, X, and Y, Form 637 Questionnaires.

DATES: Written comments should be received on or before June 30, 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 Form 637 Questionnaires 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: Form 637 Questionnaires.

OMB Number: 1545–1835.

Form Number: Questionnaires A, B, C, D, E, F, H, I, J, K, M, Q, R, S, T, UP, UV, V, W, X, and Y.

Abstract: Form 637 Questionnaires will be used to collect information about persons who are registered with the Internal Revenue Service (IRS) in accordance with Internal Revenue Code (IRC) section 4104 or 4222. The information will be used to make an informed decision on whether the applicant/registrant qualifies for registration.

Current Actions: There are no changes being made to the schedules at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,840.

Estimated Average Time Per Respondent: 1 hour, 14 minutes.

Estimated Total Annual Burden Hours: 3,479.

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: April 25, 2006.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E6–6479 Filed 4–28–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee (IRPAC); Nominations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) requests nominations of individuals to be considered for selection as Information Reporting Program Advisory Committee (IRPAC) members. Individuals or interested organizations may nominate themselves and/or a qualified person for membership. Nominations will be accepted for current vacancies and should describe and document the applicants qualifications for membership. IRPAC can be comprised of no more than twenty-three (23) members. There are six (6) positions open for calendar year 2007. It is important that the IRPAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on applicant's qualifications as well as the segment or group he/she represents.

The IRPAC advises the IRS on information reporting issues of mutual concern to the private sector and the federal government. The committee works with the Commissioner and other IRS executives to provide recommendations on a wide range of information reporting administration issues. Membership is balanced to include representation from the tax professional community, small and large businesses, state tax administration, colleges and universities, insurance, securities, payroll and other industries.

DATES: Written nominations must be received on or before July 14, 2006.

ADDRESSES: Nominations should be sent to Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Room 7559 IR, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: IRPAC Nominations. Applications may be submitted by mail to the address above or faxed to 202–622–8345. Application packages are available on the Tax Professional's Page, which is located on the IRS Internet Web site at *http://www.irs.gov/taxpros/index.html.* Application packages may also be requested by telephone from National Public Liaison, 202–927–3641 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, at 202–927–3641 (not a toll-free number) or **Public_Liaison@irs.gov.*

SUPPLEMENTARY INFORMATION: IRPAC was established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989. Since its inception, IRPAC has worked closely with the Internal Revenue Service (''IRS'') to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. IRPAC members are drawn from and represent a broad sample of industries including the payroll community, major

professional and trade associations, colleges and universities, insurance, banking, securities, state taxing agencies and other industries.

Conveying the public's perception of IRS activities to the Commissioner, the IRPAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Committee's activities.

IRPAC members are appointed by the Commissioner and serve a term of three years with approximately one third of the member's terms expiring each year. Working groups address policies and administration issues specific to information reporting. Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations.

Receipt of applications will be acknowledged, and all individuals will be notified when selections have been made. In accordance with Department of Treasury Directive 21–03, a clearance process including, pre-appointment and annual tax checks, and a Federal Bureau of Investigation criminal and subversive name check through fingerprinting will be conducted on the final applicants.

Equal opportunity practices will be followed for all appointments to the IRPAC in accordance with the Department of Treasury and IRS policies. To ensure that the recommendations of the IRPAC have taken into account the needs of the diverse groups served by the IRS, membership shall include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities. The Secretary of Treasury will review the recommended candidates and make final selections.

Dated: April 24, 2006.

Cynthia Vanderpool,

Designated Federal Official, National Public Liaison.

[FR Doc. E6–6480 Filed 4–28–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending March 31, 2006.

Last name	First name	Middle name/initials
GARDINER	LINDA.	
HAUSER	BERNHARD	D.
NAYLOR	BRENT	G.
NAYLOR	K.	GAYLE
FURBERT	HELEN	MARIE
CALACE	BARBARA	CLARA
BOULLE	NATHALIE	A.
KATARIA	TARUN.	
COMBS	MARIELUISE	HORBER
DICKERSON	WILLIAM	J.
DICKERSON	JANISE.	
ESER	FLORIDA	O.
BALDWIN	WONG	KWOK LEARN
NICHOLIS	HUMPHREY	
PETTERSSON	JAN	B.
EICHLER	KRISTA.	
WITT	ALEXANDRA.	
KADOORIE	NATALIE	LOUISE
ESCOUFLAIRE	ANNETTE.	
GILLIAM	TERENCE	VANCE
PARK	KANG	OP
WATKINS	FE	ALAAN
BERGERIOUX	ANTHONY	G.
SAM	CHOON	HAN
MCKECHNIE	MICHAEL	M.
HERMANSON	MINA	KRISTINE
GREENBERG	MARYANA.	
HAMILTON	JANET.	
SILVER	ROBERT	SPENCER
VERWER	DANIEL	FEDERICO
BIRCHFIELD	STEVEN	ELLIS
METWALLY	MOHAMED.	
ELSAS	OSKAR	LEO
FERNANDEZ	MANUEL	URIA
DENG	SUK-YEE	F.
KIM	ANNE.	
MCDONALD	ELEANOR	ANN
JEUN	WOOYONG	JUDY
NILSSON	KIRSTEN.	
COUILLARD	FELICIA	DAWN
PARK	YONG KON	RAPHAEL
MASSETT	ELLEN.	
STRUBEN	RICHARD	L.

Last name	First name	Middle name/initials
HAINAULT	TALBOT.	
RICHWELL	RHETT	TERRENCE
QUINTANA	JYTTE.	
NOWAK	ELAINE	URSULA
BLANK	WALTER	GERHARD
BSEISU	AMJAD.	
FISHER	JOHN.	
WOUTERS	JOHAN.	
LI	KENNETH	BENJAMIN
CHOW	SAVIO	S.
GARDINER	ELIZABETH.	
	SUSANNE.	
RUDGE	PENELOPE	JANE
UTZSCHNEIDER	SUSANNE.	
KIM	SUNG	SOO
LORENCEAU	CHARLES	ANTOINE
WETTERLIN	ALLISON	LOUISE
PRESTGARD	LOUANN.	
SUMMITT	HEINRICH	JOSEF
SCHOENFELD	JOSEPHINE	A.
FOSTER	STEPHEN	M.
SCHOENFELD	ARTHUR	D.
PAIZ DE ESCOBAR	CLAUDIA	LUCIA
WU	CINDY	S.
CHASE	ROBERT	ROBERTS
RICHARDSON	ALMA	CATHERINE
CLEVELAND	STEVEN	WILLIAM
PELHAM	CLARE	JOHANNA
BAMFORD	JOSEPH.	
HEIKENFELD	MARK	IAN
MARCIL	ADRIANA	GERALDINE
LUNDSDAL	OLOF	NICKOLAUS
GOODER	RICHARD	DENNIS
LOPEZ III	JOSE	JOAQUIN
PHILLIPS	ANDREW	CORENTON
PRZYBYLSKI	AE	MARTIN
DRAKE	SEAN	PATRICK
PRICE	MALIYA	ANN
LABRIE	PETER	CHARDON
BOND	PETER	J.
DORRELL	DAVID	R.
DORRELL	ANGELA	M.
STRYKER	DEANNA.	
VASWANI	KIRAN	HANEET
SVENSSON	INGRID.	
AUGESTAD	LIV	BERIT HIRSCH
COHEN	DAN	ALAN
ROLLO	TERRENCE	RD
KIMMERLE	HORST.	
OBERAI	ANJUL.	
THIBAUT	DIANE	M.
PETERS-BAXSTEVENS	KAREN	IDA
HILL	TRISTRAM	W.
HILL	SUSAN	E.
BEER	SUSAN	GENE
HARRIS	JUDITH	M.
BARRUS	JOHN	P.
KIM	SEONGMOON.	

Dated: April 17, 2006.

Angie Kaminski,

Examinations Operations, Philadelphia Compliance Services.

[FR Doc. E6–6478 Filed 4–28–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 7 Taxpayer Advocacy Panel (including the states of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make

recommendations to the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 24, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, May 24, 2006 from 2 p.m. Pacific Time to 3 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: April 20, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–6476 Filed 4–28–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 83

Monday, May 1, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2235–NC]

RIN 0938–AO38

State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriation for Fiscal Year 2003; Additional Allotments to Eliminate SCHIP Fiscal Year 2006 Funding Shortfalls; and Provisions for Continued Authority for Qualifying States to Use a Portion of Certain SCHIP Funds for Medicaid Expenditures

Correction

In notice document 06–3833 beginning on page 20697 in the issue of Friday, April 21, 2006 make the following correction:

On page 20705 the graphic should appear as follows:

TABLE 2 - ADDITIONAL SHORTFALL ALLOTMENTS FOR FY 2006 AND REDISTRIBUTION OF THE UNEXPENDED SCHIP ALLOTMENTS FOR FISCAL YEAR: 2003

Total To Eliminate FY 2006 SF /1: $283,000,000
Total for Jurisdictions /2: $2,971,500
For SF States /3: $280,028,500
Total Unexpended FY 2003 Allotments: $173,371,853
Total Needed for Redistribution for Jurisdictions /5: $1,820,404
Total Available for Shortfall Redistribution to States /6: $171,551,449

State	UNEXPENDED FY 2003 ALLOTMENTS: FY 2003 Allotments	Expenditures Applied Against FY 2003 Allotment	Unexpended FY 2003 Allotments or "None"	Initial FY 2006 Shortfall (SF) Fr. Col G Table 1	SF States Only FY 2006 Targeted Low-Income Children Expend.	FY 2006 Additional Allotments to Eliminate FY 06 SF /4	Remaining Shortfall Col E - G	Percentage of Total Col H/Tot. of H	FY 2003 Redistribution Col I x $171,551,449	Total of FY 06 Additionall Allotments + FY 03 Redistribution Col G + J
A	B	C	D	E	F	G	H	I	J	K
Alabama	$51,972,697	$51,972,697	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Alaska	$7,430,455	$7,430,455	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Arizona	$87,709,090	$87,709,090	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Arkansas	$34,154,500	$34,154,500	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
California	$548,807,933	$548,807,933	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Colorado	$37,914,522	$37,914,522	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Connecticut	$24,361,434	$17,985,044	$6,376,390	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Delaware	$8,686,068	$4,338,657	$4,347,411	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
District of Columbia	$7,201,920	$7,201,920	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Florida	$171,990,713	$171,990,713	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Georgia	$96,976,597	$96,976,597	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Hawaii	$9,647,963	$9,647,963	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Idaho	$16,795,479	$16,598,402	$197,077	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Illinois	$132,153,277	$132,153,277	None	$118,473,586	$208,510,700	$56,196,614	$62,276,972	35.73%	$61,295,559	$117,492,173
Indiana	$53,709,869	$53,709,869	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Iowa	$21,368,268	$21,368,268	None	$6,108,982	$53,332,000	$6,108,982	$0	NA	NA	$6,108,982
Kansas	$24,443,683	$24,443,683	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Kentucky	$37,984,461	$37,984,461	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Louisiana	$61,290,629	$61,290,629	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Maine	$9,688,881	$9,688,881	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Maryland	$33,648,564	$33,648,564	None	$13,710,685	$142,687,000	$13,710,685	$0	NA	NA	$13,710,685
Massachusetts	$46,201,047	$46,201,047	None	$21,905,233	$151,108,000	$21,905,233	$0	NA	NA	$21,905,233
Michigan	$95,696,032	$95,696,032	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Minnesota	$30,626,504	$30,626,504	None	$20,263,249	$15,048,000	$7,137,850	$13,125,399	7.53%	$12,918,559	$20,056,408
Mississippi	$37,672,898	$37,672,898	None	$73,582,073	$139,776,000	$73,582,073	$0	NA	NA	$73,582,073
Missouri	$43,424,901	$43,424,901	None	$7,954,769	$101,300,000	$7,954,769	$0	NA	NA	$7,954,769
Montana	$11,326,534	$11,326,534	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Nebraska	$15,414,316	$15,414,316	None	$15,743,197	$33,163,000	$15,743,197	$0	NA	NA	$15,743,197
Nevada	$30,436,463	$26,574,447	$3,862,016	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
New Hampshire	$8,903,739	$4,420,871	$4,482,868	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
New Jersey	$69,346,099	$69,346,099	None	$106,452,283	$118,072,000	$50,494,444	$55,957,839	32.10%	$55,076,008	$105,570,453
New Mexico	$32,788,606	$0	$32,788,606	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
New York	$227,517,050	$227,517,050	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
North Carolina	$81,748,254	$81,748,254	None	$2,811,733	$223,362,000	$2,811,733	$0	NA	NA	$2,811,733
North Dakota	$5,436,695	$5,436,695	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Ohio	$114,614,244	$114,614,244	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Oklahoma	$44,621,756	$44,621,756	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Oregon	$40,708,703	$37,190,523	$3,518,180	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Pennsylvania	$100,845,639	$100,845,639	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Rhode Island	$7,318,673	$7,318,673	None	$66,776,359	$28,980,213	$23,838,384	$42,937,975	24.63%	$42,261,323	$66,099,706
South Carolina	$43,402,180	$43,402,180	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
South Dakota	$6,151,723	$6,151,723	None	$544,536	$15,862,000	$544,536	$0	NA	NA	$544,536
Tennessee	$58,354,512	$0	$58,354,512	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Texas	$311,503,988	$287,658,739	$23,845,249	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Utah	$24,693,700	$24,693,700	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Vermont	$3,813,156	$3,664,187	$148,969	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Virginia	$53,437,771	$53,437,771	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Washington	$50,326,484	$14,875,909	$35,450,575	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
West Virginia	$18,550,788	$18,550,788	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Wisconsin	$43,824,792	$43,824,792	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
Wyoming	$5,480,750	$5,480,750	None	NO SF	NO SF	NO SF	NO SF	NA	NA	NA
TOTAL STATES ONLY	$3,142,125,000	$2,968,753,147	$173,371,853	$454,326,685	$1,231,200,913	$280,028,500	$174,298,185	100.00%	$171,551,449	$451,579,949
COMMONWEALTHS AND TERRITORIES										
Puerto Rico	$30,296,700	$30,296,700	None	NA	NA	$2,721,894	NA	NA	$1,667,490	$4,389,384
Guam	$1,157,625	$1,157,625	None	NA	NA	$104,002	NA	NA	$63,714	$167,717
Virgin Islands	$859,950	$859,950	None	NA	NA	$77,259	NA	NA	$47,331	$124,590
American Samoa	$396,900	$396,900	None	NA	NA	$35,658	NA	NA	$21,845	$57,503
N. Mariana Islands	$363,825	$363,825	None	NA	NA	$32,687	NA	NA	$20,024	$52,711
TOTAL	$33,075,000	$33,075,000	$0	NA	NA	$2,971,500	NA	NA	$1,820,404	$4,791,904
NATIONAL TOTAL	$3,175,200,000	$3,001,828,147	$173,371,853	$454,326,685	$1,231,200,913	$283,000,000	$174,298,185	100%	$173,371,853	$456,371,853

Footnotes:

/1 Under Section 2104(d)(1) of the Social Security Act (the Act), as amended by DRA, $283,000,000 is available for providing additional allotments to Shortfall States

/2 Under Section 2104(d)(3)(B) of the Act, as amended by DRA, $2,971,500, calculated as 1.05 percent of the $283,000,000, is available for the Jurisdictions

/3 The total amount available for additional allotments to eliminate States' shortfalls is $280,028,500, calculated as $283,000,000 minus $2,971,500 (the amount available for allotment to the Jurisdictions)

/4 Additional allotments to eliminate States' shortfall in Column G do not exceed shortfalls in Column E and are available for targeted low-income children expenditures in Column F

/5 Total redistribution amounts for Commonwealths and Territories is $1,820,404, calculated as 1.05 percent of $173,371,853 (the total unexpended FY 2003 allotments at the end of FY 2005)

/6 Total amount available for shortfall redistribution to States is $171,551,449, calculated as $173,371,853 (the total unexpended FY 2003 allotments at the end of FY 2005) minus $1,820,404 (the redistribution to the Commonwealths/Territories)

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Federal Register

Monday,
May 1, 2006

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 414, and 424

Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 414, and 424

[CMS–1270–P]

RIN 0938–AN14

Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement competitive bidding programs for certain covered items of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) throughout the United States in accordance with sections 1847(a) and (b) of the Social Security Act (the Act). These programs would change the way that Medicare pays for these items under Part B of the Medicare program by utilizing bids submitted by DMEPOS suppliers to establish applicable payment amounts. We would phase in these programs over several years.

This proposed rule would also detail requirements for CMS approved accreditation organizations that will be applying quality standards for all DMEPOS suppliers, including DMEPOS suppliers that participate in the DMEPOS competitive bidding program. In addition, this rule proposes a new fee schedule for home dialysis supplies and equipment still paid on a reasonable charge basis. This proposed rule would also clarify our policy on the scope of the statutory eyeglass coverage exclusion. We are proposing to specify in regulations that the eyeglass exclusion encompasses all devices that use lenses to aid vision or provide magnification of images for impaired vision. Further, this proposed rule would implement a revised methodology for calculating fee schedule amounts for new DMEPOS items.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 30, 2006.

ADDRESSES: In commenting, please refer to file code CMS–1270–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1270–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1270–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Lorrie Ballantine, (410) 786–7543—Overall implementation.

Joel Kaiser, (410) 786–4499—Overall implementation.

Michael Keane, (410) 786–4495—Overall implementation.

Walter Rutemueller, (410) 786–5395—Overall implementation.

Linda Smith, (410) 786–5650—Quality Standards and Accreditation.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1270–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

I. Background
- A. Payment Under Reasonable Charges
- B. Payment Under Fee Schedules
- C. Healthcare Common Procedural Coding System (HCPCS)
- D. Medicare Competitive Bidding Demonstrations
- E. Medicare Prescription Drug, Improvement, and Modernization Act of 2003
- F. Deficit Reduction Act (DRA)
- G. Program Advisory and Oversight Committee
- H. Quality Standards for Suppliers of (DMEPOS)
- I. Accreditation for Suppliers of DMEPOS and Other Items
- J. Low Vision Aid Exclusion
- K. Establishing Fee Schedule Amounts for New DMEPOS Items
- L. New Fee Schedules for Home Dialysis Supplies and Equipment

M. Covered Item Updates for Class III DME for CYs 2007 and 2008
II. Provisions of the Proposed Regulations
A. Purpose and Definitions (Proposed § 414.400 and § 414.402)
B. Implementation Contractor (Proposed § 414.406)
C. Payment Basis (Proposed § 414.408)
1. Payment Basis (Proposed § 414.408(a))
2. General Payment Rules (Proposed § 414.408(c)–(j))
3. Special Rules for Certain Rented Items of DME and Oxygen (Grandfathering of Suppliers) (Proposed § 414.408(k))
a. Process for Grandfathering Suppliers
b. Payment Amounts to Grandfathered Suppliers
(1) Grandfathering of Suppliers Furnishing Items Prior to the First Competitive Bidding Program in an Area (Proposed § 414.408(k))
(2) Suppliers That Lose Their Contract Status in a Subsequent Competitive Bidding Program
c. Payment for Accessories for Items Subject to Grandfathering
4. Payment Adjustment to Account for Inflation (Proposed § 414.408(b))
5. Authority to Adjust Payments in Other Areas (Proposed § 414.408(e))
6. Requirement to Obtain Competitively Bid Items From a Contract Supplier (Proposed § 414.408(f))
7. Limitation on Beneficiary Liability for Items Furnished by Non Contract Suppliers (Proposed § 414.408(f))
D. Competitive Bidding Areas
1. Proposed Methodology for MSA Selection for 2007 and 2009 Competitive Bidding Programs (Proposed § 414.410)
a. MSAs for 2007
b. MSAs for 2009
2. Establishing Competitive Bidding Areas (Proposed § 414.410)
a. Authority to Exempt Rural Areas and Areas With Low Population Density Within Urban Areas (Proposed § 414.410(c))
b. Establishing the Competitive Bidding Areas for 2007 and 2009 (Proposed § 414.410(b))
c. Nationwide or Regional Mail Order Competitive Bidding Program (Proposed § 414.410(d)(2))
d. Additional Competitive Bidding Areas After 2009 (Proposed § 414.410(d))
E. Criteria for Item Selection
F. Submission of Bids Under the Competitive Bidding Program (Proposed § 414.412)
1. Providers (Proposed § 414.404 and 414.422)
2. Physicians (Proposed § 414.422)
3. Product Categories for Bidding Purposes (Proposed § 414.412)
4. Bidding Requirements (Proposed § 414.408)
a. Inexpensive or Other Routinely Purchased DME Items
b. DME Items Requiring Frequent and Substantial Servicing
c. Oxygen and Oxygen Equipment
d. Capped Rental Items
e. Enteral Equipment and Supplies
f. Maintenance and Servicing of Enteral Infusion Pumps
g. Supplies Used in Conjunction With DME
h. OTS Orthotics
G. Conditions for Awarding Contracts (Proposed § 414.414)
1. Quality Standards and Accreditation (Proposed § 414.414(c))
2. Eligibility (Proposed § 414.414(b))
3. Financial Standards (Proposed § 414.414(d))
4. Evaluation of Bids (Proposed § 414.414(e))
a. Market Demand and Supplier Capacity (Proposed § 414.414(e))
b. Composite Bids (Proposed § 414.414(e))
c. Determine the Pivotal Bid (Proposed § 414.414(e))
d. Assurance of Savings (Proposed § 414.414(f))
e. Assurance of Multiple Contractors (Proposed § 414.414(g))
f. Selection of New Suppliers After Bidding (Proposed § 414.414(h))
H. Determining Single Payment Amounts for Individual Items (Proposed § 414.416)
1. Setting Single Payment Amounts for Individual Items (Proposed § 414.416(b))
2. Rebate Program (Proposed § 414.416(c))
I. Terms of Contracts (Proposed § 414.422)
1. Terms and Conditions of Contracts
2. Furnishing of Items (Proposed § 414.422(c))
3. Repairs and Replacements of Patient Owned Items Subject to Competitive Bidding (Proposed § 414.422(c))
4. Furnishing Items to Beneficiaries Whose Permanent Residence Is Within a CBA
5. Furnishing Items to Beneficiaries Whose Permanent Residence Is Outside a CBA
6. Information Collection from the Supplier
7. Change in Ownership (Proposed § 414.422(d))
8. Suspension or Termination of a Contract (Proposed § 414.422(f))
J. Administrative or Judicial Review (Proposed § 414.424)
K. Opportunity for Participation by Small Suppliers
L. Opportunity for Networks (Proposed § 414.418)
M. Education and Outreach
1. Supplier Education
2. Beneficiary Education
N. Monitoring and Complaint Services for the Competitive Bidding Program
O. Physician Authorization/Treating Practitioner and Consideration of Clinical Efficiency and Value of Items in Determining Categories for Bids (Proposed § 414.420)
P. Quality Standards and Accreditation for Suppliers of DMEPOS
1. Special Payment Rules for Items Furnished by DMEPOS Suppliers and Issuance of DMEPOS Supplier Billing Privileges (Proposed § 424.57)
2. Accreditation (Proposed § 424.58)
3. Ongoing Responsibilities of CMS Approved Accreditation Organizations
4. Continuing Federal Oversight of Approved Accreditation Organizations
a. Equivalency Review
b. Validation Review
c. Notice of Intent To Withdraw Approval for Deeming Authority
d. Withdrawal of Approval for Deeming Authority
e. Reconsideration
Q. Low Vision Aid Exclusion (Proposed § 414.15)
R. Establishing Payment Amounts for New DMEPOS (Gap-filling) (Proposed § 414.210(g))
S. Fee Schedules for Home DialysIs Supplies and Equipment (Proposed § 414.107)
T. Fee Schedules for Therapeutic Shoes (Proposed § 414.228(c))
III. Collection of Information Requirements
IV. Response to Comments
V. Regulatory Impact AnalysIs
A. Overall Impact
B. Anticipated Affects
C. Implementation Costs
D. Program Savings
E. Effect on Beneficiaries
F. Effect on Suppliers
1. Affected Suppliers
2. Small Suppliers
G. Accounting Statement
Regulation Text

I. Background

A. Payment Under Reasonable Charges

Payment for most DMEPOS items, including supplies and equipment, furnished under Part B of the Medicare program (Supplementary Medical Insurance) is made through contractors known as Medicare carriers. Before January 1, 1989, payment for most of these services was made on a reasonable charge basis by these carriers. The methodology for determining reasonable charges is set forth in section 1842(b) of the Social Security Act (Act) and 42 CFR part 405, subpart E of the regulations. Reasonable charge determinations are generally based on customary and prevailing charges derived from historic charge data, with the ''reasonable charge'' for an item being the lowest of the following factors:

- The supplier's actual charge for the item.
- The supplier's customary charge for the item.
- The prevailing charge in the locality for the item. The prevailing charge may not exceed the 75th percentile of the customary charges of suppliers in the locality.
- The inflation indexed charge (IIC). The IIC is defined in § 405.509(a) as the lowest of the fee screens used to determine reasonable charges for services, including supplies, and equipment paid on a reasonable charge basis (excluding physicians' services) that is in effect on December 31 of the previous fee screen year, updated by the inflation adjustment factor. The inflation adjustment factor is based on the current change in the consumer price index for all urban consumers (CPI-U), as compiled by the Bureau of Labor Statistics, for the 12-month period ending June 30 each year.

B. Payment Under Fee Schedules

Section 4062 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) (OBRA ''87) added section 1834 to the Act and implemented a fee schedule payment methodology for most durable medical equipment (DME), prosthetic devices, and orthotic devices furnished after January 1, 1989. Specifically, sections 1834(a)(1)(A) and (B) and 1834(h)(1)(A) of the Act provide that Medicare payment for these items is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. We implemented this new payment methodology at 42 CFR part 414, subpart D of our regulations. Sections 1834(a)(2) through (a)(5) and section 1834(a)(7) of the Act, as well as § 414.200 through § 414.232 (with the exception of § 414.228) of the regulations, set forth separate payment categories of DME and describe how the fee schedule for each of the following categories is established:

- Inexpensive or other routinely purchased items (section 1834(a)(2) of the Act and § 414.220 of the regulations);
- Items requiring frequent and substantial servicing (section 1834(a)(3) of the Act and § 414.222);
- Customized items (section 1834(a)(4) of the Act and § 414.224);
- Oxygen and oxygen equipment (section 1834(a)(5) of the Act and § 414.226);
- Other items of DME (section 1834(a)(7) of the Act and § 414.229).

Each category has its own unique payment rules. With the exception of customized items, a fee schedule amount is calculated for each item or category of DME that is identified by a code in the Healthcare Common Procedure Coding System (HCPCS). The Medicare payment amount for a customized item of DME is based on the Medicare carrier's individual consideration of that item. The fee schedule amounts for oxygen and oxygen equipment are monthly payment amounts. Payment under the DME benefit is made for supplies necessary for the effective use of DME (for example, lancets and test strips used with blood glucose monitors). These supplies are paid for using the same methodology that we use to pay for inexpensive or routinely purchased items.

The fee schedule amounts for DME are generally adjusted annually by the change in the CPI–U for the 12-month period ending June 30 of the preceding year. The fee schedule amounts are also generally limited by a ceiling (upper limit) and floor (lower limit) equal to 100 percent and 85 percent, respectively, of the median of the statewide fee schedule amounts.

Since 1994, Medicare has paid for most surgical dressings in accordance with section 1834(i) of the Act and § 414.220(g) of the regulations, using the same methodology as is used for payment of inexpensive or routinely purchased DME.

Under section 1834(h) of the Act and § 414.228 of the regulations, payment for prosthetic and orthotic devices is made on a lump sum basis and is equal to the lower of the fee schedule amount calculated for the item or the actual charge for the item, less any unmet deductible. The fee schedule amounts are calculated using a weighted average of Medicare payments made in the States in each of 10 CMS regions from July 1, 1986 through June 30, 1987, adjusted annually by the change in the CPI–U for the 12-month period ending June 30 of the preceding year. The regional fee schedule amounts are limited by a ceiling (upper limit) and floor (lower limit) equal to 120 percent and 90 percent, respectively, of the average of the regional fee schedule amounts for each State.

As authorized under section 1842(s) of the Act and 42 CFR, part 414, subpart C of our regulations, Medicare pays for parenteral and enteral nutrition (PEN) nutrients, equipment and supplies on the basis of 80 percent of the lesser of the actual charge for the item, or the fee schedule amount for the item (§ 414.102(a)). The fee schedule amounts for PEN items are calculated on a nationwide basis and are the lesser of the reasonable charges for 1995, or the reasonable charges that would have been used in determining payment for these items in 2002 under the former reasonable charge payment methodology (§ 414.104(b)). The fee schedule amounts are generally adjusted annually by the percentage increase in the CPI–U for the 12-month period ending with June 30 of the preceding year (§ 414.102(c)). Under § 414.104(a), payment for PEN nutrients and supplies is made on a purchase basis, and payment for PEN equipment that is rented is made on a monthly basis. We are proposing to revise § 414.1 of our regulations to specify that fee schedules were established for PEN items in accordance with our authority under section 1842(s) of Act.

Section 627 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) amended section 1833(o)(2) of the Act to require implementation of fee schedule amounts, effective January 1, 2005, for the purpose of determining payment for custom molded shoes, extra-depth shoes, and inserts (collectively, ''therapeutic shoes''). We believe that this section of the MMA is largely self-implementing because it mandates use of the methodology set forth in section 1834(h) of the Act for prosthetic and orthotic devices in determining the fee schedule amounts for therapeutic shoes. We implemented that methodology through regulations at part 414, subpart D, and section 627 of the MMA provides that the same methodology shall apply to therapeutic shoes. Section 627 of the MMA was implemented through program instructions, and on January 1, 2005, Medicare began paying for therapeutic shoes based on fee schedule amounts determined in accordance with section 1834(h) of the Act and part 414, subpart D of our regulations.

C. Healthcare Common Procedure Coding System (HCPCS)

The Healthcare Common Procedure Coding System (HCPCS) is a standardized coding system used to process claims submitted to Medicare, Medicaid, and other health insurance programs by providers, physicians, and other suppliers. The HCPCS code set is divided into the following 2 principal subsystems, referred to as level I and level II of the HCPCS:

- Level I of the HCPCS codes is comprised of Current Procedural Terminology (CPT) codes. CPT codes are a uniform coding system consisting of descriptive terms and identifying codes that are used primarily to identify medical services and procedures furnished by physicians and other health care professionals which are billed to public or private health insurance programs. CPT codes are developed, published, and maintained by the American Medical Association. CPT codes do not include codes needed to separately report medical items that are regularly billed by suppliers other than physicians.
- Level II of the HCPCS codes is a standardized coding system used primarily to identify products and supplies that are not included in the CPT codes, such as DME, orthotics, prosthetics, and supplies when used outside a physician's office.

HCPCS Level II Codes classify like items by category for the purpose of efficient claims processing. Assignment of a HCPCS code is not a coverage determination, and does not imply that any payer will cover the items in the code category. For some DMEPOS items, such as wheelchairs and wheelchair cushions, minimum performance

standards must be met before an item can be classified under a HCPCS code. In October of 2003, the Secretary delegated authority under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to CMS to maintain and distribute the HCPCS Level II Codes. The HCPCS Level II Codes will be used to describe the DME, orthotic, and enteral nutrition items furnished under the competitive bidding programs being proposed in this proposed rule, both for the purpose of requesting bids and for establishing payment amounts.

D. Medicare Competitive Bidding Demonstrations

Section 4319 of the Balanced Budget Act of 1997 (BBA) authorized implementation of up to five demonstration projects of competitive bidding for Medicare Part B items, except physician services. In accordance with section 4319 of the BBA, we planned and implemented the DMEPOS Competitive Bidding Demonstration to test the feasibility and program impacts of using competitive bidding to set prices for DME and prosthetics, orthotics, and supplies. The demonstration was implemented at two sites: Polk County, Florida, and in the San Antonio, Texas, Metropolitan Statistical Area (MSA). The competitive bidding demonstrations, authorized under the BBA, were implemented successfully in both demonstration sites from 1999 to 2002, resulted in a substantial savings to the program and offered beneficiaries sufficient access and a quality product.

At the first site, Polk County, Florida, we conducted the first of two rounds of bidding in 1999. Five categories of DMEPOS were put up for bidding: Oxygen equipment and supplies (required by statute), hospital beds and accessories, enteral nutrition formulas and equipment, urological supplies, and surgical dressings. A total of 16 contract suppliers began providing demonstration products in Polk County on October 1, 1999, and continued for 2 years. The second and final round of bidding in Polk County was conducted in 2001 for the same product categories minus enteral nutrition. (Enteral nutrition was dropped to retain only product categories that are overwhelmingly used in private homes.) The second set of competitively bid payment amounts took effect in October 2001. As in round one, 16 suppliers were selected, of whom half had participated as winners previously. The new fee schedules developed from the bids in each round replaced the statewide Medicare DMEPOS fees. The second round of the demonstration in Polk County ended in September 2002.

Texas was the second site for the demonstration. In the San Antonio MSA's Bexar, Comal, and Guadalupe counties we conducted bidding in 2000 for five kinds of DMEPOS: Oxygen equipment and supplies, hospital beds and accessories, wheelchairs and accessories, general orthotics, and nebulizer drugs. Fifty-one suppliers were selected and began serving Medicare beneficiaries under the new fees in February 2001. The San Antonio site ended operations in December 2002, the statutorily required termination date in the BBA.

In each area of evaluation, the data indicated mostly favorable results for the Medicare program. The demonstration led to lower Medicare fees for almost every item in almost every product category in each round of bidding. Fee reductions varied by product category and item, resulting in a nearly 20 percent overall savings at each site. Statistical and qualitative data indicate that beneficiary access and quality of services were essentially unchanged.

The DMEPOS Competitive Bidding Demonstration offers valuable lessons for understanding the impacts of competitive bidding for Medicare services. These lessons are especially important now because the MMA mandates a larger role for competitive bidding within the Medicare program. Specifically, section 302(b) of the MMA requires the Secretary to establish and implement competitive bidding programs for the furnishing of certain DME and associated supplies, enteral nutrition and associated supplies, and off-the-shelf orthotics. In addition, section 303(d) of the MMA requires the Secretary to implement a competitive bidding program for certain Medicare Part B drugs not paid on a cost or prospective payment system basis, and section 302(b) of the MMA mandates competitive bidding demonstration projects for clinical laboratory services and managed care.

E. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173)

Section 302(b)(1) of the MMA amended section 1847 of the Act to require the Secretary to establish and implement programs under which competitive bidding areas are established throughout the United States for contract award purposes for the furnishing of certain competitively priced items for which payment is made under Part B (the ''Medicare DMEPOS Competitive Bidding Program'').

Competitive bidding provides a way to harness marketplace dynamics to create incentives for suppliers to provide quality items in an efficient manner and at a reasonable cost. In our view, the Medicare DMEPOS Competitive Bidding Program has five objectives, as follows:

- To implement competitive bidding programs for certain DMEPOS items.
- To assure beneficiary access to quality DMEPOS as a result of the program.
- To reduce the amount Medicare pays for DMEPOS and create a payment structure under competitive bidding that is more reflective of a competitive market.
- To limit the financial burden on beneficiaries by reducing their out-of-pocket expenses for DMEPOS they obtain through the program.
- To contract with suppliers who conduct business in a manner that is beneficial for the program and for Medicare beneficiaries.

F. Deficit Reduction Act of 2005 (Pub. L. 109–171)

Section 5101(a) of the Deficit Reduction Act of 2005 (DRA) amended section 1834(a)(7)(A) of the Act to change the way Medicare pays for capped rental items. This section revised the period of payment for capped rental from 15 to 13 months. After rental payments are made for a 13 month period of continuous use, title to the capped rental items transfers from the supplier to the beneficiary. Once the title has transferred, amended section 1834(a)(7)(A)(iv) provides that reasonable and necessary maintenance and servicing payments (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular item) will be made. These statutory changes apply only to capped rental items whose first rental month occurs on or after January 1, 2006.

Section 5101(b) of the DRA also amended section 1834(a)(5) of the Act to limit monthly payments for oxygen equipment to a 36 month period of continuous use. Then ownership of the oxygen equipment will be transferred from the supplier to the beneficiary. Medicare will continue making monthly payments for oxygen contents when appropriate for beneficiary owned stationary and portable systems in the amounts recognized under section 1834(a)(9) after title to the equipment transfers to the beneficiary. However, under new section 1834(a)(5)(F)(II)(bb), maintenance and servicing payments for beneficiary owned oxygen equipment (for parts and labor not covered by the supplier's or manufacturer's warranty)

will be made only if they are reasonable and necessary. These statutory changes went into effect on January 1, 2006. For beneficiaries receiving Medicare covered oxygen equipment as of December 31, 2005, the 36-month rental period begins January 1, 2006. In a future rulemaking, we will propose to revise regulations found in part 414, subpart D to incorporate these DRA provisions.

G. Program Advisory and Oversight Committee

Section 1847(c) of the Act requires the Secretary to establish a Program Advisory and Oversight Committee (PAOC) that will provide advice to the Secretary with respect to the following functions, including—

- The implementation of the Medicare DMEPOS Competitive Bidding Program;
- The establishment of financial standards for entities seeking contracts under the Medicare DMEPOS Competitive Bidding Program, taking into account the needs of small providers;
- The establishment of requirements for collection of data for the efficient management of the Medicare DMEPOS Competitive Bidding Program;
- The development of proposals for efficient interaction among manufacturers, providers of services, suppliers (as defined in section 1861(d) of the Act) and individuals; and
- The establishment of quality standards for DMEPOS suppliers under section 1834(a)(20) of the Act.

In addition, section 1847(c)(3)(B) of the Act authorizes the PAOC to perform additional functions to assist the Secretary in carrying out the Medicare DMEPOS Competitive Bidding Program as the Secretary may specify.

As authorized under section 1847(c)(2) of the Act, the PAOC members were appointed by the Secretary of Health and Human Services and represent a broad mix of relevant industry, consumer, and government parties. Specifically, the membership roster includes two beneficiary/consumer representatives, four manufacturer representatives, five supplier representatives, three certification/standards representatives, six Federal and State program representatives, one physician and one pharmacist. The representatives have expertise in a variety of subject matter areas, including DMEPOS, competitive bidding methodologies and processes, and rural and urban marketplace dynamics. The first PAOC meeting was announced in a **Federal Register** notice (CMS–1279–N2, 69 FR 31125) and was held at CMS on October 6, 2004.

We have held two additional PAOC meetings where we, along with our contractor RTI, presented material to both the PAOC and the public relating to the provisions that are outlined in this proposed rule. The topics that we presented include—

- Medicare's timeline for implementation of the Medicare DMEPOS Competitive Bidding Program;
- Results of the Medicare competitive bidding demonstration projects authorized by section 4319 of the BBA;
- Structure of the Medicare DMEPOS Competitive Bidding Program being proposed in this proposed rule;
- Existing non-Medicare competitive bidding programs for DMEPOS items;
- Program design options for the Medicare DMEPOS Competitive Bidding Program being proposed in this proposed rule;
- Criteria for selecting Metropolitan Statistical Areas (MSAs) in which competition under the Medicare DMEPOS Competitive Bidding Program will occur in both 2007 and 2009;
- Criteria for selecting items for competitive bidding;
- Bidding process overview;
- Methodology for setting single payment amounts for competitively bid items;
- Capacity of DMEPOS suppliers and beneficiary utilization of DMEPOS items;
- Financial capabilities of bidding suppliers;
- Exception authority under section 1847(a)(3) of the Act for rural areas and areas with low population density within urban areas that are not competitive; and
- Quality standards and accreditation procedures applicable to all DMEPOS suppliers.

In addition to the PAOC meetings, we have designed and implemented a CMS Web site (*http://cms.hhs.gov/suppliers/dmepos/compbid/paoc.asp*) specifically for the public to have access to all PAOC presentations, minutes, and updates for the Medicare DMEPOS Competitive Bidding Program. In accordance with section 1847(c)(5) of the Act, the PAOC will continue to operate until December 31, 2009. Future PAOC meeting dates, as well as other information pertinent to the Medicare DMEPOS Competitive Bidding Program, can be found on our Web site.

H. Quality Standards for Suppliers of (DMEPOS)

Section 302(a)(1) of the MMA added section 1834(a)(20) to the Act, which requires the Secretary to establish and implement quality standards for suppliers of certain items, including consumer service standards, to be applied by recognized independent accreditation organizations. Suppliers of DMEPOS must comply with the quality standards in order to furnish any item for which payment is made under Part B, and to receive and retain a provider or supplier billing number used to submit claims for reimbursement for any such item for which payment may be made under Medicare. Section 1834(a)(20)(D) of the Act requires us to apply these quality standards to suppliers of the following items for which we deem the standards to be appropriate:

- Covered items, as that term is defined in section 1834(a)(13), for which payment may be made under section 1834(a);
- Prosthetic devices and orthotics and prosthetics described in section 1834(h)(4); and
- Items described in section 1842(s)(2) of the Act, which include medical supplies, home dialysis supplies and equipment, therapeutic shoes, parenteral and enteral nutrients, equipment, and supplies, electromyogram devices, salivation devices, blood products, and transfusion medicine.

Section 1834(a)(20)(E) of the Act explicitly authorizes the Secretary to establish the quality standards by program instruction or otherwise after consultation with representatives of relevant parties. We consulted with the PAOC and determined that it is in the best interest of the industry and beneficiaries to publish the quality standards through program instructions and select the accreditation organizations in order to ensure that suppliers that wish to participate in competitive bidding will know what standards they must meet in order to be awarded a contract. The standards will be applied prospectively and will be published on our website. All suppliers of DMEPOS and other items to which section 1834(a)(20) of the Act applies will be required to meet the quality standards established under that section. Finally, section 1847(b)(2)(A)(i) of the Act requires an entity (a DMEPOS supplier) to meet the quality standards specified by the Secretary under section 1834(a)(20) of the Act before being awarded a contract under the Medicare DMEPOS Competitive Bidding Program.

Since December 11, 2000, suppliers have been required to meet the Medicare enrollment standards at § 424.57, satisfaction of which is required for these suppliers to participate in the Medicare program and

receive Medicare payments for DMEPOS and other items. Even with the implementation of the enrollment standards at § 424.57, we believe there has not been sufficient oversight of suppliers of DMEPOS and other items related to the quality and provision of their products. The Department of Health and Human Services, Office of Inspector General (OIG), has conducted several investigations of suppliers of DMEPOS and other items to determine the legitimacy of their businesses and has uncovered many examples of fraud and abuse. Examples of the types of fraud and abuse that were discovered include—

- Billing for services not performed;
- Billing for a more expensive service than was rendered;
- Billing separately for several services that should be combined into one billing;
- Billing twice for the same service;
- Billing for more expensive equipment or supplies than were used;
- Offering or receiving kickbacks (that is, offering or accepting something in return for services);
- Offering or accepting a bribe to use a particular service or company;
- Providing unnecessary services; and
- Submitting false cost reports.

The OIG began publicizing fraud alerts as a vehicle to identify fraudulent and abusive practices being committed by DMEPOS suppliers within the health care industry.

To enhance the quality of services provided by suppliers of DMEPOS and further reduce fraudulent practices, we are developing quality standards, as required by section 1834(a)(20) of the Act, to address suppliers' accountability, business integrity, provision of quality products to beneficiaries, and performance management. These standards will measure the effect of suppliers' services on beneficiaries. The supplier quality standards will include product specific requirements that will focus on a consumer-directed model of service delivery for suppliers to improve beneficiary access to information about DMEPOS. We believe these requirements will empower beneficiaries to make better-informed choices regarding equipment selection and the proper and safe use of DMEPOS, which we believe will lead to increased beneficiary satisfaction, safe and appropriate use of purchased equipment, and positive health outcomes. The supplier quality standards will provide more efficient processes and standardized materials for suppliers to increase consistency and continuity for supplier services to beneficiaries, beneficiary education, and responsiveness to beneficiary requests for equipment options. We are using contractor support and input from industry suppliers and national associations to develop the quality standards. Additionally, the contractors will meet with beneficiaries who use the specific products to solicit their input and assurance that their needs are being addressed by the quality standards requirements.

The quality standards will include performance management requirements to ensure the development, implementation, monitoring, and evaluation of policies, procedures, and products so that suppliers can maintain compliance with regulatory requirements and our policy instructions. The quality standards will include language from current CMS standards and industry best practice standards for the following areas: Administration; financial management; human resource management; beneficiary services; performance management; environment and safety; beneficiary rights/ethics; and information management. Additionally, the supplier quality standards will include requirements for monitoring beneficiary satisfaction with products and suppliers' responses to beneficiary complaints. As is authorized under section 1834(a)(20)(E), we will be establishing the supplier quality standards through program instructions and will publish them on our Web site. Additionally, in a future rule, we will propose to address DMEPOS supplier requirements for enrollment and enforcement procedures.

I. Accreditation for Suppliers of DMEPOS and Other Items

Section 1834(a)(20)(B) of the Act requires the Secretary, notwithstanding section 1865(b) of the Act, to designate and approve one or more independent accreditation organizations to apply the quality standards to suppliers of DMEPOS and other items. The Medicare program currently contracts with State Agencies to perform survey and review functions for providers and suppliers to approve their participation in or coverage under the Medicare program. Additionally, section 1865(b) of the Act sets forth the general procedures for CMS to designate national accreditation organizations to deem providers or suppliers to meet Medicare conditions of participation or coverage if they are accredited by a national accreditation organization approved by CMS. Many types of providers and suppliers have a choice between having the State Agency or the CMS approved accreditation organization survey them. If the provider or supplier selects the CMS-approved accreditation organization and is in compliance with the accreditation organization standards, it is generally deemed to meet the Medicare conditions of participation or coverage. CMS is responsible for the oversight and monitoring of the State Agencies and the approved accreditation organizations. The procedures, implemented by the Secretary, for designating private and national accreditation organizations and the Federal review process for accreditation organizations are located at 42 CFR parts 422 (for Medicare Advantage organizations) and 488 (for most providers and suppliers). Although, the statute itself does not require us to issue a rulemaking or provide notice in the **Federal Register** in order to designate and approve DMEPOS accreditation organizations, we believe that the Administrative Procedure Act does require us to give notice and an opportunity for comment before we institute our procedures for designating and supervising these organizations. To accommodate suppliers that wish to participate in the Medicare DMEPOS Competitive Bidding Program, we will phase-in the accreditation process and require accreditation organizations to prioritize their surveys to accredit suppliers in the selected MSAs and competitive bidding areas. We will provide further guidance in a **Federal Register** notice on the grandfathering-in of suppliers that have already been accredited, and the submission procedures for accreditation after this rule is finalized.

J. Low Vision Aid Exclusion

Section 1862(a)(7) of the Act excludes payment where ''expenses are for * * * eyeglasses (other than eyewear described in section 1861(s)(8)) or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes * * *.'' The Medicare regulations at § 411.15(b) exclude from coverage eyeglasses and contact lenses, except for—

- Post-surgical prosthetic lenses customarily used during convalescence for eye surgery in which the lens of the eye was removed (for example, cataract surgery);
- Prosthetic lenses for patients who lack the lens of the eye because of congenital absence or surgical removal; and
- One pair of conventional eyeglasses or conventional contact lenses furnished

after each cataract surgery during which an intraocular lens is inserted.

From as early as 1980, we have clarified that we viewed closed circuit visual aid systems and other low vision devices to be subject to the eyeglass coverage exclusion at section 1862(a)(7) of the Act. We have also concurred with carrier policies that have excluded payment for low vision aids because of the eyeglass exclusion. Moreover, the Medicare Appeals Council has recognized that video magnifiers, or closed circuit televisions (CCTVs), are excluded from coverage by section 1862(a)(7) of the Act. However, we have never issued a regulation or national coverage decision that specifically states that the eyeglass exclusion at section 1862(a)(7) of the Act applies to low vision aids. We are proposing to revise § 411.15(b), with certain specific exceptions, to expressly state that the eyeglass exclusion applies to all devices that use one or more lens for the primary purpose of aiding vision. In proposing this revision, we are mindful that three United States district courts have found that section 1862(a)(7) of the Act does not prohibit payment for video magnifiers. (*Collins* v. *Thompson*, No 2:03-cv-265-FtM–29SPC (M.D. Fla. June 4, 2004); *Davidson* v. *Thompson*, No. Civ. 04–32 LFG (D.N.M. 2004); *Currier* v. *Thompson*, 369 F. Supp. 2d 65 (D. Me. 2005).) The Currier court, however, recognized that the statute was ambiguous. Moreover, the Supreme Court has recently recognized that a prior judicial construction of an ambiguous statute does not categorically control an agency's contrary construction. (*National Cable & Telecommunications Association* v. *Brand X Internet Services*, 125 S. Ct. 2688, 2701 (2005).) In section II.O. of this proposed rule, we explain the reasons for our interpretation of the statute that the eyeglass exclusion does apply to low vision aids.

K. Establishing Fee Schedule Amounts for New DMEPOS Items

Since 1989, CMS and its contractors have used an administrative process known as gap-filling to establish fee schedule amounts for DMEPOS items when fee schedule base data is not available, such as when a new code is added to Level II of the HCPCS to describe a new category of items. For example, section 1834(a)(2)(B) of the Act requires that the fee schedules for inexpensive or routinely purchased DME (for example, canes) be based on average reasonable charges for the item from July 1, 1986 through June 30, 1987. When a new code for an item (for example, a new category of canes) falling under this category is added to the HCPCS, reasonable charge data from 1986/87 is not available and the gap-filling process is used to estimate 1986/87 reasonable charges. Since 1989, fee schedule amounts have been gap-filled using either—

- Fee schedule amounts for comparable items;
- Supplier or retail prices; or
- Wholesale or manufacturer prices plus a reasonable mark-up.

There is currently no methodology set forth in regulations for establishing fee schedule amounts for DMEPOS items in these situations. Therefore, in § 414.210, we are proposing a modified version of our existing gap-filling process to be used in establishing fee schedule amounts for DMEPOS items to which are assigned new HCPCS Level II Codes. This process will be used to set payment amounts for all new DMEPOS items, even if those items fall within a product category that is subject to competitive bidding, until bids for those items are available for establishing payments in accordance with section 1847(b)(5) of the Act.

L. New Fee Schedules for Home Dialysis Supplies and Equipment

Section 1842(s)(1) of the Act gives the Secretary the authority to implement fee schedules to be used for payment under Medicare of specific items (listed in section 1842(s)(2) of the Act) still paid using the reasonable charge payment methodology described in section I.A. of this proposed rule. In § 414.107, we are proposing to use this authority to implement a fee schedule payment methodology for home dialysis supplies and equipment, one of these specified items.

M. Covered Item Updates for Class III DME for CYs 2007 and 2008

Sections 1834(a)(14)(H) and (I) of the Act give the Secretary discretion in determining the appropriate fee schedule update percentages for CYs 2007 and 2008, respectively, for DME which are ''class III medical devices described in section 513(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)(1)(C)).'' In making these determinations, the Secretary must take into account recommendations contained in a report from the Government Accountability Office (GAO) regarding the appropriate update percentages for these devices. The GAO report is mandated by section 302(c)(1)(B) of the MMA and must be submitted to the Congress and transmitted to the Secretary by no later than March 1, 2006. Class III devices paid in accordance with the DME fee schedule payment methodology include osteogenesis or bone growth stimulators, implantable infusion pumps, external defibrillators, and ultraviolet light therapy systems. We are soliciting comments on how to determine the appropriate fee schedule percentage change for these devices for 2007 and 2008 and will consider these comments in conjunction with the recommendations in the GAO report in determining the appropriate update percentage for these devices for 2007 and 2008.

II. Provisions of the Proposed Regulation

We are proposing to add a new subpart F to part 414 to specify the requirements for the Medicare DMEPOS Competitive Bidding Program. Subpart F would set forth policies and procedures relating to the program in §§ 414.400 through 414.446.

A. Purpose and Definitions (Proposed § 414.400 and § 414.402)

[If you choose to comment on issues in this section, please include the caption ''Use of terms'' at the beginning of your comments.]

We propose in § 414.400 to state that the purpose of proposed new subpart F would be to implement the Medicare DMEPOS Competitive Bidding Program for certain DMEPOS items as required by sections 1847(a) and (b) of the Act.

As set forth in proposed § 414.402, we are proposing to define certain frequently occurring terms that will be used in competitive bidding. Specifically, we are proposing to define the following terms:

Bid means an offer to furnish an item for a particular price and time period that includes, where appropriate, any services that are directly related to the furnishing of the item.

Competitive bidding area (CBA) means an area established by the Secretary under this proposed rule.

Composite bid means the sum of a bidding supplier's weighted bids for all items within a product category for purposes of allowing a comparison across bidding suppliers.

Competitive bidding program means a program established under this proposed rule.

Contract supplier means an entity that is awarded a contract by CMS to furnish items under a competitive bidding program.

DMEPOS stands for durable medical equipment, prosthetics, orthotics and supplies.

Grandfathered item means any one of the following items for which payment is made on a rental basis prior to the

implementation of a competitive bidding program.

(1) An inexpensive or routinely purchased item described in § 414.220;

(2) An item requiring frequent and substantial servicing as described in § 414.222;

(3) Oxygen and oxygen equipment described in § 414.226; and

(4) A capped rental item described in § 414.229.

Grandfathered supplier means a noncontract supplier that furnishes a grandfathered item.

Item means one of the following products identified by a HCPCS code, other than class III devices under the Federal Food, Drug and Cosmetic Act and inhalation drugs, and includes the services directly related to the furnishing of that product to the beneficiary:

(1) Durable medical equipment (DME), as defined in § 414.202 and further classified into the following categories:

(a) Inexpensive or routinely purchased items, as specified in § 414.220(a);

(b) Items requiring frequent and substantial servicing, as specified in § 414.222(a);

(c) Oxygen and oxygen equipment, as specified in § 414.226(b); and

(d) Other DME (capped rental items), as specified in § 414.229.

(2) Supplies necessary for the effective use of DME.

(3) Enteral nutrients, equipment, and supplies.

(4) Off-the-shelf orthotics, which are orthotics described in section 1861(s)(9) of the Act that require minimal self-adjustment for appropriate use and do not require expertise in trimming, bending, molding, assembling, or customizing to fit a beneficiary.

Item weight is a number assigned to an item based on its beneficiary utilization rate in a competitive bidding area when compared to other items in the same product category.

Metropolitan Statistical Area (MSA) has the same meaning as that given by the Office of Management and Budget.

Nationwide competitive bidding area means a competitive bidding area that includes the United States and its territories.

Noncontract supplier means a supplier that is located in a competitive bidding area or that furnishes items through the mail to beneficiaries in a competitive bidding area but that is not awarded a contract by CMS to furnish items included in the competitive bidding program for that area.

Physician has the same meaning as in section 1861(r)(1) of the Act.

Pivotal bid means the highest composite bid based on bids submitted by suppliers for a product category that will include a sufficient number of suppliers to meet beneficiary demand for the items in that product category.

Product category means a grouping of related items that are included in a competitive bidding program.

Single payment amount means the allowed payment for an item furnished under a competitive bidding program.

Supplier means an entity with a valid Medicare supplier number, including an entity that furnishes items through the mail.

Treating practitioner means a physician assistant, nurse practitioner, or clinical nurse specialist, as those terms are defined in section 1861(aa)(5) of the Act.

Weighted bid means the item weight multiplied by the bid price submitted for that item.

B. Implementation Contractor (Proposed § 414.406)

[If you choose to comment on issues in this section, please include the caption ''Implementation Contractor'' at the beginning of your comments.]

Section 1847(b)(9) of the Act provides that the Secretary may contract with appropriate entities to implement the Medicare DMEPOS Competitive Bidding Program. Therefore, in proposed § 414.406(a), we would designate one or more competitive bidding implementation contractors (CBICs) for the purpose of implementing the Medicare Competitive Bidding Program. Section 1847(a)(1)(C) of the Act also authorizes the Secretary to waive such provisions of the Federal Acquisition Regulation (FAR) as are necessary for the efficient implementation of this section, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate. The Secretary is exercising this authority to waive all requirements of the FAR, other than provisions dealing with confidentiality, because of the need for expeditious implementation of a program of this significance and magnitude. However, this does not preclude us from voluntarily using or adapting certain provisions of the FAR for purposes of the competitive bidding contracts.

We envision that the Medicare DMEPOS Competitive Bidding Program will have six primary functions, including overall oversight and decision making, operation design functions (including the design of both bidding and outreach material templates, as well as program processes), bidding and evaluation, access and quality monitoring, outreach and education, and claims processing. We considered the organizational structure and requirements necessary to conduct these functions, and have chosen to exercise our contracting authority under section 1847(b)(9) of the Act and contract with one or more CBICs to assist us with many of these functions.

We considered several options in designing the most appropriate framework for implementing the Medicare DMEPOS Competitive Bidding Program. Since the implementation of competitive bidding involves many functions that are time limited and require specialized skills, for example, setting up bidding areas, reviewing bids, and setting single payment amounts, we believe that it would be prudent to initially implement most aspects of the Medicare Competitive Bidding Program through one or more CBICs. Processing of Medicare claims for most DMEPOS is currently done by four DME regional carriers (DMERCs). These DMERCs would continue to process claims for DMEPOS items subject to competitive bidding and would continue to perform other existing DMERC functions. We have evaluated the anticipated feasibility and cost of using one or more implementation contractor(s) to assist us with implementing the Medicare DMEPOS Competitive Bidding Program, concentrating on the potential for capturing economies of scale and scope, program consistency, existing resources and infrastructure, and the viability of implementation under the timeframe mandated by section 1847(a)(1)(B) of the Act.

We would contract with one or more CBICs to conduct some program functions at a national level and interact with the DMERC contractors. Specifically, we envision that the CBIC(s) would conduct certain functions related to competitive bidding, such as preparing the request for bids (RFB), performing bid evaluations, selecting qualified suppliers, and setting single payment amounts for all competitive bidding areas. Additionally, the CBIC(s) would be charged with educating the DMERCs on the bidding process and procedures. The CBIC(s) would also assist CMS and the DMERCs in monitoring program effectiveness, access, and quality. The DMERCs would continue to provide outreach and education to beneficiaries and suppliers in their regions, process claims, apply the single payment amounts set by the CBIC(s) for each competitive bidding area, and continue to be responsible for complaints related to claims processing. We would continue to be responsible for overall

oversight and decision making, as well as policy related outreach and education to the CBIC(s), DMERCs, suppliers, and beneficiaries.

In our view, this approach would achieve economies of scale since the responsibility for producing program materials and evaluating bids would rest with the CBIC(s). As a result, we believe that this approach would both lower costs and ensure regional consistency in that the responsibility would not be divided between various entities.

We considered two other alternatives for implementation of the Medicare DMEPOS Competitive Bidding Program. The first was to have each DMERC conduct competitive bidding in its respective area and be responsible for all activities related to competitive bidding. The second alternative was to have the CMS Consortium Contractor Management Officer (CCMO)/ Regional Offices (RO) and the DMERCs implement the program. However, we believe that by using one or more specialized CBICs, we can successfully implement and effectively manage this program.

C. Payment Basis (Proposed § 414.408)

[If you choose to comment on issues in this section, please include the caption ''Payment Basis'' at the beginning of your comments.]

1. Payment Basis (§ 414.408(a))

Section 1847(b)(5) of the Act mandates that a single payment amount be established for each item in each competitive bidding area based on the bids submitted and accepted for that item. Medicare payment for the item is then made on an assignment-related basis equal to 80 percent of the applicable single payment amount, less any unmet Part B deductible described in section 1833(b) of the Act. Section 1847(a)(6) of the Act requires that this payment basis be substituted for the payment basis otherwise applied under section 1834(a) of the Act for DME, section 1834(h) of the Act for Off-The-Shelf (OTS) orthotics, or section 1842(s) of the Act for enteral nutrition, as appropriate.

We are proposing in § 414.408 that payment to the contract supplier would be based on the single payment amount for the item in the competitive bidding area where the beneficiary maintains a permanent residence. If an item that is included in a competitive bidding program is furnished to a beneficiary who does not maintain a permanent residence in a competitive bidding area, the payment basis for the item would be 80 percent of the lesser of the actual charge for the item, or the applicable fee schedule amount for the item. We are also proposing that implementation of a competitive bidding program would not preclude the use of an Advanced Beneficiary Notice (ABN) to allow beneficiaries to make informed consumer choices regarding whether to obtain items for which Medicare might not make payment.

2. General Payment Rules (Proposed § 414.408 (c–j))

Section 1834(a) of the Act and § 414.200 through § 414.232 (with the exception of § 414.228) set forth the Medicare Part B payment methodology we use to pay for the rental or purchase of new and used DME. Each item of DME that is paid for under these sections is classified into a payment category, and each category has its own unique payment rules. Section 1842(s) of the Act provides authority for establishing a statewide or area wide fee schedule to be used for the payment of items described in section 1842(s)(2) of the Act. Under this authority, we implemented fee schedules for the payment of purchased and rented enteral nutrients, equipment, and supplies (see § 414.100 through § 414.104). Section 1834(h) of the Act and § 414.228 of our regulations set forth the Medicare Part B payment methodology we use to pay for orthotics and prosthetics.

Other than the rules governing calculation of the single payment amount and other proposed modifications to existing policies that are addressed in this regulation, we propose that the current requirements regarding the rental or purchase of DMEPOS items would continue to apply under the Medicare DMEPOS Competitive Bidding Program. While we believe that we have discretion under section 1847(a)(6) of the Act to adopt new rules that would govern these requirements, at this time we are proposing only to change the payment basis for these items.

3. Special Rules for Certain Rented Items of DME and Oxygen (Grandfathering of Suppliers) (Proposed § 414.408(k))

a. Process for Grandfathering Suppliers

Section 1847(a)(4) of the Act requires that in the case of covered DME items for which payment is made on a rental basis under section 1834(a) of the Act, and in the case of oxygen for which payment is made under section 1834(a)(5) of the Act, the Secretary shall establish a ''grandfathering'' process by which rental agreements for those covered items and supply arrangements with oxygen suppliers entered into before the start of a competitive bidding program may be continued. DME paid on a rental basis under section 1834(a) of the Act includes inexpensive or routinely purchased items furnished on a rental basis, items requiring frequent and substantial servicing, and capped rental items. Section 1834(a)(5) of the Act mandates that payment be made for oxygen and oxygen equipment on the basis of monthly payment amounts for oxygen and oxygen equipment (other than portable oxygen equipment) with separate add-on payments for portable oxygen equipment. We are proposing the grandfathering process described below for rented DME and oxygen and oxygen equipment when these items are included under a competitive bidding program. This process would apply only to suppliers that began furnishing the items described above to beneficiaries who maintain a permanent residence in an area prior to the implementation of a competitive bidding program in that area that includes the same items.

In the case of the specific items identified in this section, we are proposing in § 414.408 to give beneficiaries the choice of deciding whether they would like to continue renting the item from the grandfathered supplier or a contract supplier, unless the grandfathered supplier is not willing to continue furnishing the item under the terms we have specified below. If the grandfathered supplier is not willing to continue furnishing the item under these terms, then a contract supplier would assume responsibility for continuing to furnish the item and be paid based on the single payment amount determined for that item under the competitive bidding program. In addition, the beneficiary could elect, at any time, to transition to a contract supplier and the contract supplier would be required to accept the beneficiary as a customer. Suppliers who agree to be grandfathered suppliers for a specific item must agree to be a grandfathered supplier for all beneficiaries who request to continue to use their service for that item.

b. Payment Amounts to Grandfathered Suppliers (§ 414.408(k))

(1) Grandfathering of Suppliers Furnishing Items Prior to the First Competitive Bidding Program in an Area

For items requiring frequent and substantial servicing, as well as oxygen and oxygen equipment, we are proposing that a grandfathered supplier may continue furnishing these items to beneficiaries in accordance with

existing rental agreements or supply arrangements. However, we are also proposing that the grandfathered supplier be paid the single payment amounts determined for those items under the competitive bidding program since beneficiaries rent these items for extended time periods as long as the items remain medically necessary. We believe that this payment proposal is consistent with section 1847(a)(4), which requires us to establish a ''process'' under which rental agreements and supply arrangements ''may be continued,'' but is silent regarding the terms of that process. Since the rental payments are not calculated based on or limited to the purchase fee for that item as is the case for other rented DME items, we do not believe that it is not reasonable to continue paying the fee schedule amounts for these items and that payment at the competitively determined rates will comport with an overarching goal of competitive bidding to achieve savings for the Medicare program.

Unlike items requiring frequent and substantial servicing, the duration of the rental payments for capped rental items and inexpensive or routinely purchased items are limited. In addition, unlike oxygen equipment, the payment amounts made for capped rental items and inexpensive or routinely purchased items are limited to the approximate purchase fee for the item. For items that are furnished on a rental basis under § 414.220 or § 414.229, we are proposing in § 414.408 that the grandfathered supplier could continue furnishing the items in accordance with existing rental agreements and continue to be paid in accordance with section 1834(a) of the Act. We believe that continuing to pay for these grandfathered items at the fee schedule rates is authorized under section 1862(a)(17) of the Act, which allows the Secretary to specify ''other circumstances'' in which Medicare will make payment where the expenses for a competitively bid item furnished in a competitive bidding area were incurred by a supplier other than a contract supplier. In our view, the limited duration of the rental agreements for capped rental items and inexpensive or routinely purchased items furnished on a rental basis, in addition to the fact that payments for these items are based on or limited to the purchase fees for the items, constitute appropriate circumstances under which we would allow these rental agreements, including their payment terms, to continue until their conclusion. The rental fee schedule amounts that we would pay for grandfathered items in the capped rental or inexpensive or routinely purchased categories would be those fee schedule amounts established for the State in which the beneficiary maintains a permanent residence.

(2) Suppliers That Lose Their Contract Status in a Subsequent Competitive Bidding Program

There may be instances when a supplier that was awarded a contract to furnish rental items or oxygen and oxygen equipment under a competitive bidding program is not awarded a contract to furnish the same rental items under a subsequent competitive bidding program in the same area. We are concerned that if this occurs, beneficiaries will need to switch suppliers in the middle of the rental period and could experience a disruption of service as a result. In order to minimize this possibility, we are proposing to apply section 1847(a)(4) not only in an area where we implement a competitive bidding program for the first time, but also in the same area when we implement a subsequent competitive bidding program. We believe this proposal is consistent with section 1847(a)(4), which we interpret as applying to each competitive bidding ''program'' that we implement in an area, since each program will be unique in terms of bidders, contract suppliers, items included in the program, and prices. Our proposed policy would allow beneficiaries to continue renting medically necessary items from their existing supplier, even if that supplier has lost its contract status under a subsequent competitive bidding program.

However, where a supplier that is no longer a contract supplier continues to furnish a rental item or oxygen and oxygen equipment on a grandfathered basis, we are proposing that Medicare make payment for the item in the amount established for that item under the new competitive bidding program for that area. We believe that section 1847(a)(4) gives us this discretion, since that section only requires us to establish a ''process'' under which these rental agreements or supply arrangements ''may continue'' but does not specify a payment methodology that must be used under that process. In addition, we do not believe that the alternative, which would be to make payment for the item under the fee schedule, is reasonable since the rental agreement or supply arrangement began under a competitive bidding program.

c. Payment for Accessories for Items Subject to Grandfathering

We propose that accessories and supplies used in conjunction with an item which is furnished under a grandfathering process described above may also be furnished by the grandfathered supplier. Payment would be based on the single payment amount established for the accessories and supplies if the item is oxygen or oxygen equipment or one that requires frequent and substantial servicing. For accessories and supplies used in conjunction with capped rental and inexpensive or routinely purchased items, the payment amounts would be based on the fee schedule amounts for the accessories and supplies furnished prior to the implementation of the first competitive bidding program in an area, or on the newly established competitively bid single payment amounts if the items are furnished by a grandfathered supplier that was a contract supplier for a competitive bidding program, but is no longer a contract supplier for a subsequent competitive bidding program in the same area.

Our proposal is similar to the grandfathering approach that was used in the DME competitive bidding demonstrations in that we paid grandfathered suppliers the competitively bid amount for certain items and the fee schedule amounts for other items. We specifically solicit comments on our grandfathering proposals.

4. Payment Adjustment to Account for Inflation (proposed § 414.408(b))

The fee schedule payment amounts for DMEPOS items are updated by annual update factors described in part 414, subparts C and D. In general, the update factors are established based on the percentage change in the CPI–U for the 12-month period ending June of each year and preceding the calendar year to which the update applies. In accordance with section 1847(b)(3)(B) of the Act, the term of a competitive bidding contract may not exceed three years. We propose applying an annual inflation update to the single payment amounts established for a competitive bidding program. Specifically, beginning with the second year of a contract entered into under a competitive bidding program, we would update the single payment amounts by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding calendar year. Using the CPI–U index is consistent with Medicare using this index to update the

DME fee schedule. This will obviate the need for the supplier to consider inflation in the cost of business when submitting its bids for furnishing competitively bid items under a multi-year contract.

5. Authority To Adjust Payments in Other Areas (§ 414.408(e))

Section 1834(a)(1)(F)(ii) of the Act provides authority, effective for covered items furnished on or after January 1, 2009 that are included in a competitive bidding program, for us to use the payment information determined under that competitive bidding program to adjust the payment amounts otherwise recognized under section 1834(a)(1)(B)(ii) of the Act for the same DMEPOS in areas not included in a competitive bidding program. Sections 1834(h)(1)(H)(ii) and 1842(s)(3)(B) of the Act provide the same authority for orthotic and prosthetic devices, and enteral nutrition, respectively. We are proposing to use this authority but have not yet developed a detailed methodology for doing so. Therefore, we specifically invite comments and recommendations on this issue. We believe that our methodology will be informed by our experience and information gained from the competitive bidding programs in 2007 and 2009. When submitting recommendations on a methodology for using this authority, commenters should keep in mind the following factors that are likely to be incorporated in the methodology:

- The threshold or amount or level of savings that the Medicare program must realize for an item or group of items before we would use payment information from a competitive bidding program to adjust payment amounts for those items in other areas.
- Whether adjustments of payment amounts in other areas would be on a local, regional, or national basis, depending on the extent to which the single payment amounts and price indexes (for example, local prices used in calculating the CPI-U) for an item or group of items varied across different areas of the country.
- Whether adjustments of payment amounts in other areas would be based on a certain percentage of the single payment amount(s) from the competitive bidding area(s).

We will fully consider all comments and recommendations we receive on this subject.

6. Requirement To Obtain Competitively Bid Items From a Contract Supplier (§ 414.408(f))

Beneficiaries often travel to visit family members or to reside in a State with a warmer climate during the winter months. So that these beneficiaries do not have to return home to obtain needed DMPEOS items, in § 414.408(f)(2)(ii), we are proposing that beneficiaries on travel status be allowed to obtain items that they would ordinarily be required to obtain from a contract supplier for their competitive bidding area from a supplier that has not been awarded a contract to furnish items for that area. If the area that the beneficiary is visiting is also a competitive bidding area and the item is subject to the competitive bidding program in that area, he or she would be required to obtain the item from a contract supplier for that area. If the area that the beneficiary is visiting is not a competitive bidding area, or if the area is a competitive bidding area but the item needed by the beneficiary is not included in the competitive bidding program for that area, he or she would be required to obtain the item from a supplier that has a valid Medicare supplier number. In either case, payment to the supplier would be paid based on the single payment amount for the item in the competitive bidding area where the beneficiary maintains a permanent residence. We propose that if a beneficiary is not visiting another area, but is merely receiving competitively bid items from a supplier located outside but near the boundary of the competitive bidding area, the proposed travel status exemption would not apply. We plan to closely monitor the programs to ensure that this type of abuse or circumvention of the competitive bidding process and requirements to obtain items from a contract supplier does not occur.

We are also proposing to base claims jurisdiction and the payment amount on the beneficiary's permanent residence as we have done since the early 1990s with the current DMEPOS program under § 421.210(e). Under this proposal, the DMERC responsible for the area where the beneficiary maintains a permanent residence would process all claims submitted for items furnished to that beneficiary, whether or not the beneficiary obtained the item in that area. If the beneficiary maintained a permanent residence in a competitive bidding area and obtained an item included in the competitive bidding program for that area, Medicare would pay the supplier the single payment amount for the item determined under the competitive bidding program for that area. If the beneficiary did not maintain a permanent residence in a competitive bidding area, Medicare would pay the supplier the fee schedule amount for the area in which the beneficiary maintains a permanent residence. We believe that this proposal is consistent with our current policy, under which suppliers across the country are paid the same amount for similar products obtained by beneficiaries who maintain their permanent residence within the same geographic area.

We are proposing that Medicare beneficiaries who maintain their permanent residence in a competitive bidding area be required to obtain competitively bid items from a contract supplier for that area with the following two exceptions:

- A beneficiary may obtain an item from a supplier or a noncontract supplier in accordance with the competitive bidding program grandfathering provisions described in section II.C.3. above.
- A beneficiary who is outside of the competitive bidding area where he or she maintains a permanent residence may obtain an item from a contract supplier, if he or she is in another competitive bidding area and the same item is included under a competitive bidding program for that area, or from a supplier with a valid Medicare supplier number, if he or she is either in another competitive bidding area that does not include the item in its program or is in an area that is not a competitive bidding area.

Unless one of the exceptions discussed above applies, Medicare would not pay for the item.

7. Limitation on Beneficiary Liability for Items Furnished by Noncontract Suppliers (§ 414.408(f))

We are proposing that if a noncontract supplier located in a competitive bidding area furnishes an item included in the competitive bidding program for that area to a beneficiary who maintains a permanent residence in that area, the beneficiary would have no financial liability to the noncontract supplier unless the grandfathering exception discussed in section II.C.3. of this preamble applies. This rule would not apply if the noncontract supplier furnished items that are not included in the competitive bidding program for the area. We are proposing to specially designate the supplier numbers of all noncontract suppliers so that we will be able to easily identify whether a noncontract supplier has furnished a competitively bid item to a beneficiary who maintains a permanent residence in a CBA.

D. Competitive Bidding Areas

[If you choose to comment on issues in this section, please include the caption ''Competitive Bidding Areas'' at the beginning of your comments.]

Section 1847(a)(1)(A) of the Act requires that competitive bidding programs be established and implemented in areas throughout the United States. We are interpreting the term ''United States'' to include all states, territories, and the District of Columbia. Section 1847(a)(1)(B) of the Act provides us with the authority to phase-in competitive bidding programs so that the competition under the programs occurs in—

- 10 of the largest MSAs in 2007;
- 80 of the largest MSAs in 2009; and
- Additional areas after 2009.

Section 1847(a)(1)(B) of the Act also authorizes us to phase-in competitive bidding programs first among the highest cost and volume items or those items that we determine have the largest savings potential. Our proposed methodologies for selecting the MSAs for 2007 and 2009 are described in section II.D.1. of this preamble. Once the MSAs are selected for 2007 and 2009, we would define the competitive bidding areas for 2007 and 2009. The process we propose to use in establishing competitive bidding areas in future years is provided in section II.D.2. of this preamble.

1. Proposed Methodology for MSA Selection for 2007 and 2009 Competitive Bidding Programs (§ 414.410)

Based on sections 1847(a)(1)(B)(i)(I) and (II) of the Act, we have the authority to select from among the largest MSAs during the first two implementation phases in order to phase-in the programs in the most successful way, thereby achieving the greatest savings while maintaining quality and beneficiary access to care. In phasing in the competitive bidding programs, we would adopt a definition of the term ''metropolitan statistical area'' consistent with that issued by the Office of Management and Budget (OMB) and applicable for the years 2007 and 2009. OMB is the Federal agency responsible for establishing the standards for defining MSAs for the purpose of providing nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. OMB most recently revised its standards for defining MSAs in 2000 (65 FR 82228–82238). Under these standards, an MSA is defined as a core based statistical area (a statistical geographic area consisting of the county or counties associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration as measured through commuting ties with the counties containing the core) associated with at least one urbanized area that has a population of at least 50,000, and is comprised of the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting. The OMB issues periodic updates of the MSAs between decennial censuses based on United States Census Bureau estimates, but other than identifying certain MSAs having a population core of at least 2.5 million, does not rank MSAs based on population size. The U.S. Census Bureau, however, periodically publishes a Statistical Abstract of the United States, which contains a table listing large MSAs, or MSAs having a population of 250,000 and over. For the purpose of this rule, we are proposing to use this data to identify the largest MSAs.

In this section, we propose formula driven methodology for selecting the MSAs for competitive bidding in 2007 and 2009. After we select the MSAs, we would define the competitive bidding areas. For the purpose of this section, DMEPOS allowed charges are the Medicare fee-for-service (FFS) allowed charge data for DMEPOS items that we have authority to include in a competitive bidding program. This data does not include Medicare expenditures for DMEPOS items under the Medicare Advantage Program.

a. MSAs for 2007

We propose to use a multiple step process in selecting the MSAs for 2007. First, we propose to identify the 50 largest MSAs in terms of total population in 2005 using population estimates published by the U.S. Census Bureau in its table of large MSAs from the Statistical Abstract of the United States. Second, the 25 MSAs out of the 50 MSAs identified in step one would be eliminated from consideration based on our determination that they have the lowest totals of DMEPOS allowed charges for items furnished in calendar year (CY) 2004. This step would allow us to focus on the 25 MSAs that have the highest totals of DMEPOS allowed charges which, we believe, would produce a greater chance of savings as a result of competitive bidding than MSAs with lower total DMEPOS allowed charges. For illustration purposes only, based on DMEPOS allowed charge data for items furnished in CY 2003 and Census Bureau population estimates as of July 1, 2003, the 25 MSAs that would be left for consideration after step two is completed are shown in Table 1. However, we would propose to select the actual MSAs for 2007 using U.S. Census Bureau population data published as of July 1, 2005, and DMEPOS allowed charge data for items furnished in CY 2004. We would propose using population data for 2005 and DMEPOS allowed charge data for 2004 since this data will be the most recently available data at the time that the MSAs are selected for 2007 implementation.

TABLE 1.—TOP 25 MSAS BASED ON TOTAL DMEPOS MEDICARE ALLOWED CHARGES FOR 2003

MSA	Allowed charges
New York-Northern New Jersey-Long Island, NY-NJ-PA (New York)	$312,124,291
Los Angeles-Long Beach-Santa Ana, CA (Los Angeles)	253,382,483
Miami-Fort Lauderdale-Miami Beach, FL (Miami)	221,660,443
Chicago-Naperville-Joliet, IL-IN-WI (Chicago)	173,922,952
Houston-Baytown-Sugar Land, TX (Houston)	149,060,607
Dallas-Fort Worth-Arlington, TX (Dallas)	139,910,862
Detroit-Warren-Livonia, MI (Detroit)	121,444,298
San Juan, PR	108,478,208
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD (Philadelphia)	97,487,063
Atlanta-Sandy Springs-Marietta, GA (Atlanta)	75,860,276
Tampa-St. Petersburg-Clearwater, FL (Tampa)	71,309,635
Boston-Cambridge-Quincy, MA-NH (Boston)	62,467,094
Washington-Arlington-Alexandria, DC-VA-MD-WV (DC)	61,416,109

TABLE 1.—TOP 25 MSAS BASED ON TOTAL DMEPOS MEDICARE ALLOWED CHARGES FOR 2003—Continued

MSA	Allowed charges
Baltimore-Towson, MD (Baltimore)	59,714,310
Pittsburgh, PA	56,612,095
St. Louis, MO-IL	55,931,373
Riverside-San Bernardino-Ontario, CA (Riverside)	52,910,209
Cleveland-Elyria-Mentor, OH (Cleveland)	52,237,312
Orlando, FL	51,982,164
San Francisco-Oakland-Fremont, CA (San Francisco)	45,565,320
San Antonio, TX	44,113,886
Cincinnati-Middletown, OH-KY-IN (Cincinnati)	41,582,961
Kansas City, MO-KS	41,310,326
Virginia Beach-Norfolk-Newport News, VA-NC (Virginia Beach)	41,016,726
Charlotte-Gastonia-Concord, NC-SC (Charlotte)	37,874,144

Third, we propose to score the MSAs based on combined rankings of DMEPOS allowed charges per FFS beneficiary (charges per beneficiary) and the number of DMEPOS suppliers per number of beneficiaries receiving DMEPOS items (suppliers per beneficiary) in CY 2004, with equal weight (50 percent) being given to each factor. The MSAs would be ranked from 1 to 25 in terms of DMEPOS allowed charges per FFS beneficiary (for example, the MSA with the highest DMEPOS allowed charges per FFS beneficiary would be ranked number 1). Similarly, areas having more suppliers per beneficiary are more likely to be competitive and would be ranked higher than MSAs having fewer suppliers per beneficiary. Based on our experience from the DMEPOS competitive bidding demonstrations, the number of suppliers would be based on suppliers with at least $10,000 in allowed charges attributed to them for DMEPOS items furnished in the MSA in CY 2004. The number of beneficiaries would be based on the number of beneficiaries receiving DMEPOS items in the MSA in CY 2004. If more than one MSA receives the same score, we would propose to use total DMEPOS allowed charges for items that we have authority to include in a competitive bidding in each MSA as the tiebreaker since this would be an indicator of where more program funds would be spent on DMEPOS items subject to competitive bidding. Table 2 illustrates how the 25 MSAs from Table 1 above would be scored based on data for CY 2003. The MSA rankings for charges per beneficiary and suppliers per beneficiary are listed in parentheses. We propose that the final scoring be based on utilization data for CY 2004 and population data for CY 2005.

TABLE 2.—SCORING OF TOP 25 MSAS BASED ON DATA FOR 2003

[Scoring based on combined rank from columns 3 and 4]

MSA	Score	Charges per beneficiary	Suppliers per beneficiary	Allowed charges
Miami	3	$428.44 (1)	0.01121 (2)	$221,660,443
Houston	6	348.83 (2)	0.00864 (4)	149,060,607
Dallas	8	297.33 (3)	0.00749 (5)	139,910,862
Riverside	9	220.93 (8)	0.01144 (1)	52,910,209
San Antonio	9	243.03 (6)	0.00897 (3)	44,113,886
Los Angeles	11	277.16 (5)	0.00692 (6)	253,382,483
Charlotte	14	226.09 (7)	0.00661 (7)	37,874,144
Orlando	18	212.57 (9)	0.00569 (9)	51,982,164
San Juan	25	291.97 (4)	0.00388 (21)	108,478,208
Atlanta	25	185.80 (15)	0.00569 (10)	75,860,276
Tampa	25	190.30 (13)	0.00529 (12)	71,309,635
Kansas City	25	186.39 (14)	0.00555 (11)	41,310,326
Pittsburgh	26	197.95 (11)	0.00484 (15)	56,612,095
Virginia Beach	26	207.28 (10)	0.00477 (16)	41,016,726
St. Louis	32	169.81 (18)	0.00488 (14)	55,931,373
San Francisco	32	127.56 (24)	0.00632 (8)	45,565,320
Cincinnati	32	167.06 (19)	0.00528 (13)	41,582,961
Cleveland	33	182.01 (16)	0.00470 (17)	52,237,312
Detroit	37	195.99 (12)	0.00290 (25)	121,444,298
Baltimore	37	174.38 (17)	0.00396 (20)	59,714,310
Philadelphia	40	152.38 (21)	0.00443 (19)	97,487,063
DC	41	128.97 (23)	0.00449 (18)	61,416,109
Chicago	44	160.26 (20)	0.00327 (24)	173,922,952
New York	45	139.81 (22)	0.00342 (23)	312,124,291
Boston	47	113.99 (25)	0.00371 (22)	62,467,094

For purposes of phasing-in the programs, we would propose to exclude from consideration for competitive bidding until 2009 the three largest MSAs in terms of population, as well as any MSA that is geographically located in an area served by two DMERCs. The three largest MSAs based on total population (based on 2003 data) are New York, Los Angeles, and Chicago. We believe that these MSAs should not be phased in until 2009 because of the

logistics associated with the start-up of this new and complex program. As of 2000, these three MSAs all had total populations of over 9 million. By comparison, the largest area in which the demonstrations were conducted was San Antonio (total population of 1.7 million in 2000). We want to gain experience with the competitive bidding process in MSAs larger than San Antonio before moving on to the three largest MSAs. After we have gained experience operating competitive bidding programs in CBAs that encompass smaller MSAs in 2007 and 2008, we would propose to implement programs that include New York, Los Angeles and Chicago in 2009.

However, we are considering an alternative under which we would establish CBAs that include portions of one or more of these MSAs (for example, by county). We believe that this alternative is authorized by section 1847(a)(1)(B)(II), which states that competition under the programs shall occur in 80 of the largest MSAs in 2009 but does not require the competition to occur in the entire MSA. In addition, section 1847 does not prohibit us from implementing a competitive bidding program in an area that is larger than a MSA. We welcome comments on these alternatives.

We are proposing not to include competitive bidding areas that cross DMERC regions because this could complicate implementation by having two DMERCs processing claims from one competitive bidding area.

The next step we propose would entail ensuring that there is at least one competitive bidding area in each DMERC region by first selecting the highest scoring MSA in each DMERC region (other than New York, Los Angeles, Chicago, or MSAs that cross DMERC boundaries). This would ensure that each DMERC gains some experience with competitive bidding prior to 2009, when competitive bidding would be implemented in CBAs that include eighty MSAs. We would also propose to select no more than two MSAs per State among the initial competitive bidding areas selected for 2007 in order to learn how competitive bidding works in more states and regions of the country. In summary, we are proposing to select the ten MSAs in which competition under the programs would occur in 2007 using the following steps:

- Identify the top 50 MSAs in terms of general population.
- Focus on the 25 MSAs from step one with the greatest total of DMEPOS allowed charges.
- Score the MSAs from step two based on combined rankings of DMEPOS allowed charges per beneficiary and suppliers per beneficiary, with lower scores indicating a greater potential for savings if programs are implemented in those areas.
- Exclude the 3 largest MSAs in terms of population (New York, Los Angeles, Chicago) and any MSA that crosses DMERC boundaries.
- Select the lowest scoring MSA from each DMERC region.
- Select the next 6 lowest scoring MSAs regardless of DMERC region, but not more than 2 MSAs from 1 State.
- Break ties in scores using DMEPOS allowed charges, selecting MSAs with higher total DMEPOS allowed charges.

There are a number of alternative methods for selecting the MSAs for 2007 that we considered. The MSAs could have been selected based on a combination of one or more variables or measures including, but not limited to—

- General population;
- Medicare FFS beneficiary population; Number of beneficiaries receiving DMEPOS items that we have authority to include in a competitive bidding; Total Medicare allowed charges for DMEPOS items subject to competitive bidding; and
- Number of suppliers of DMEPOS items that we have authority to include in a competitive bidding program.

In evaluating this alternative, we defined the general population as all individuals residing in an MSA, whether or not they were enrolled in Medicare. One advantage of this variable is that total population is a widely accepted measure of gauging MSA size and the data are readily accessible to the general public through the U.S. Census Bureau webpage. Another advantage of this option is that total population takes into account the demand for DMEPOS items and other supplies from population groups other than the Medicare population. DMEPOS demand from non-Medicare individuals might make it less likely that a supplier not selected for competitive bidding would exit the market. This could help increase the likelihood of competition in future rounds of competitive bidding within that MSA. However, we recognize that the MSAs with the largest total populations may not have the most Medicare beneficiaries or the greatest potential for savings. One reason is that the age distribution is not uniform across MSAs. MSAs located in states that have either large immigrant populations or have experienced rapid recent growth often have younger than average age profiles. Another reason is that DMEPOS utilization and potential profits are not uniform across MSAs. It is quite possible that some of the smaller population MSAs may have a greater potential for savings than MSAs with much larger populations. We believe that the disadvantages of selecting MSAs based on general population are greater than the advantages of using this method and, therefore, do not propose using general population as the sole variable in selecting the MSAs for 2007.

An advantage of selecting MSAs based on the Medicare FFS population is that this population represents the number of individuals who could potentially be affected by competitive bidding. A disadvantage of selecting MSAs based solely on this variable is that it does not reflect actual DMEPOS utilization; therefore, we do not propose using FFS population as the sole variable in selecting the MSAs for 2007. Per capita DMEPOS utilization rates vary across MSAs. As a result, MSAs with fewer Medicare beneficiaries could have a greater potential for savings from competitive bidding. The advantage of using the number of Medicare beneficiaries receiving DMEPOS items to select the MSAs is that MSAs would be selected based on the number of individual beneficiaries that are most likely to be directly affected by competitive bidding because they already have a need for these items. A disadvantage of this option is that the number of specific beneficiaries receiving DMEPOS items is only a static measure. The number of beneficiaries who would be receiving DMEPOS products in the future could be substantially different from the current number. Treatment patterns within the MSA could change or the number of beneficiaries receiving DMEPOS items could fluctuate if beneficiaries switch from FFS to a Medicare Advantage plan. For these reasons, we do not propose using number of beneficiaries receiving DMEPOS items as the sole variable in selecting the MSAs for 2007.

Selecting the MSAs using the steps we propose utilizes a variety of variables that we believe will help us predict which MSAs will offer the largest savings potential under a competitive bidding program. In step 2 above, we would focus on a subset of large MSAs with higher allowed charges for DMEPOS items, which is consistent with section 1847(a)(1)(B)(ii) of the Act, which would allow us to phase in the Medicare DMEPOS Competitive Bidding Program first for those items that have the highest cost and highest volume, or those items that have the largest savings potential. This step would directly address the question of which MSAs have the highest costs. In step 3 above,

we would use allowed DMEPOS charges per beneficiary and the number of suppliers per beneficiary to further measure the savings potential for each MSA. Allowed DMEPOS charges per beneficiary is a measure of per capita DMEPOS utilization in terms of the overall DMEPOS cost per beneficiary. We believe that areas with higher utilization rates and costs would have a greater potential for savings under the programs, which will rely on competition among suppliers to lower costs in the area. Competition among suppliers is necessary for competitive bidding to be successful. Without sufficient competition among suppliers, suppliers have little incentive to submit low bids in response to the request for bids for DMEPOS products. In addition, we believe that competition for market share among winning suppliers will act as a market force to maintain a high level of quality products. The number of suppliers per beneficiary is a direct measure of how many suppliers are competing for each beneficiary's business. We expect that the higher the number of suppliers per beneficiary, the higher the degree of competition will be.

We welcome comments about the selection method for the original ten MSAs in 2007. We welcome recommendations of other options and criteria for consideration. After further consideration of comments, in the final rule, we may adopt other criteria regarding issues described above or other criteria and options brought to our attention through the comment process.

b. MSAs for 2009

In selecting the 70 additional MSAs in which competition will occur in 2009, we propose using generally the same criteria used to select the MSAs for 2007. Since the number of MSAs in which competition must occur in 2009 is much higher than the number for 2007, the steps in the selection process would change as follows:

- We would score all of the MSAs included in the table of large MSAs in the most recent publication of the U.S. Census Bureau s Statistical Abstract of the United States.
- We would propose using the same criteria to score the MSAs as we would use in selecting the MSAs for 2007, but use data from CY 2006.

One option we are considering and on which we are requesting comments is whether we should modify the ranking of MSAs based on allowed DMEPOS charges per beneficiary so that it focuses on charges in each MSA for the items that experienced the largest payment reductions or savings under the initial round of competitive bidding in 2007.

In selecting the MSAs for 2009, we do not propose excluding the 3 largest MSAs in terms of population size or MSAs that cross DMERC boundaries from the 80 largest MSAs to be included in the CBAs. In addition, we do not propose limiting the number of MSAs that can be selected from any one state.

2. Establishing Competitive Bidding Areas (§ 414.410)

Section 1847(a)(1) of the Act requires that we phase in competitive bidding programs and establish competitive bidding areas throughout the United States over several years beginning in 2007. Section 1847(a)(3) of the Act gives us the authority to ''exempt rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item.'' Our proposed methodology for establishing competitive bidding areas under the Medicare DMEPOS Competitive Bidding Program is presented below.

a. Authority To Exempt Rural Areas and Areas With Low Population Density Within Urban Areas (§ 414.410(c))

Section 1847(a)(3) of the Act allows us to exempt from the Medicare DMEPOS Competitive Bidding Program rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item. We propose to use this authority to exempt areas from competitive bidding if data for the areas indicate that they are not competitive based on a combination of the following indicators:

- Low utilization of items in terms of number of items and/or allowed charges for DMEPOS in the area relative to other similar geographic areas.
- Low number of suppliers of DMEPOS items subject to competitive bidding serving the area relative to other similar geographic areas; and/or
- Low number of Medicare FFS beneficiaries in the area relative to other similar geographic areas.

We would propose to make decisions regarding what constitutes low (non-competitive) levels of utilization, suppliers, and beneficiaries on the basis of our analysis of the data for allowed charges, allowed services for items that may be subject to competitive bidding, and the number of Medicare FFS beneficiaries and DMEPOS suppliers in specific geographic areas. In defining urban and rural areas, we propose to use the definitions currently in § 412.64(b)(1)(ii) of the regulations.

We invite comments on the methodologies we have proposed for determining whether an area within an urban area that has a low population density is not competitive. We will be reviewing the total allowed charges, number of beneficiaries, and number of suppliers to determine whether a rural area should be exempted from competitive bidding. In addition, we also are inviting comments on standards for exempting particular rural areas from competitive bidding.

b. Establishing the Competitive Bidding Areas for 2007 and 2009 (§ 414.410(b))

Section 1847(a)(1)(B) of the Act requires that the competition ''occurs in'' 10 of the largest MSAs in 2007, and in 80 of the largest MSAs in 2009, but does not require us to define the competition boundaries concurrently with the MSA boundaries, as long as 10 MSAs are involved in 2007 and 80 MSAs are involved in 2009. Therefore, we do not believe that section 1847(a)(1)(B) of the Act prohibits us from extending individual competition areas beyond the MSA boundaries in 2007 or 2009. We propose that an area (for example, a county, parish, zip code, etc.) outside the boundaries of an MSA be considered for inclusion in a competitive bidding area for 2007 and/or 2009 if all of the following apply:

- The area adjoins an MSA in which a competitive bidding program will be operating in 2007 or 2009.
- The area is not part of an MSA in which a competitive bidding program will be operating in 2007 or 2009.
- The area is competitive, as explained below.
- The area is part of the normal service area or market for suppliers who also serve the MSA market or areas within the boundaries of an MSA in which a competitive bidding program will be operating in 2007 or 2009.

As explained in section D.1. above, we are defining an MSA as a core based statistical area associated with at least one urbanized area that has a population of at least 50,000, and comprised of the central county or counties containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting. However, when using this definition to establish the boundaries of an MSA, the OMB would not consider whether an area or areas adjoining an MSA are served by the same DMEPOS suppliers that furnish items to beneficiaries residing in the MSA. If an area has a high level of utilization, significant expenditures, and/or a large number of

suppliers of DMEPOS items included in the competitive bidding program for the adjoining MSA, we believe that it would be practical and beneficial to include this area in the competitive bidding area. The savings to the program associated with adding the area to the competitive bidding area would likely offset any incremental administrative costs incurred by the implementation contractor associated with including the area in the competitive bidding program for the MSA. Finally, we are not proposing to consider counties that do not adjoin an MSA for inclusion in a competitive bidding area for 2007 or 2009 because we believe that these outlying counties are too far removed from the areas that OMB has determined to be economically integrated. We are proposing that we have the discretion to define a CBA to be either concurrent with an MSA, larger than an MSA, or smaller than an MSA. We will detail in the request for bids the exact boundaries of each CBA. We invite comments on the criteria to be used in considering whether to include counties outside MSAs in a competitive bidding area in 2007 or 2009.

c. Nationwide or Regional Mail Order Competitive Bidding Program (§ 414.410(d)(2))

Our data shows that a significant percentage of certain items such as diabetic testing supplies (blood glucose test strips and lancets) are furnished to beneficiaries by national mail order suppliers. Therefore, we propose to establish a nationwide or regional competitive bidding program, effective for items furnished on or after January 1, 2010, for the purpose of awarding contracts to suppliers to furnish these items across the nation or region to beneficiaries who elect to obtain them through the mail order outlet. The national or regional competitive bidding areas under this program would be phased in after 2009, and payment would be based on the bids submitted and accepted for the furnishing of items through mail order throughout the nation or region. Suppliers that furnish these items through mail order on either a national or regional basis would be required to submit bids to participate in any competitive bidding program implemented for the furnishing of mail order items.

We propose that prior to the establishment of a nationwide or regional competitive bidding program in 2010, mail order suppliers would be eligible to submit bids for furnishing items in one or more of the CBAs we establish for purposes of the 2007 and 2009 implementation phases. In addition, beginning with programs implemented in 2010, mail order suppliers would be eligible to submit bids in one or more CBAs to furnish items that are not included in a nationwide or regional competitive bidding program. National or regional mail order suppliers would be required to submit bids and be selected as contract suppliers for each CBA in which they seek to furnish these items. They would, however, have the choice of either submitting the same bid amounts for each CBA or submitting separate bids.

For items that are subject to a nationwide or regional mail order competitive bidding program, we propose that suppliers who furnish these same items in the local market and do not furnish them via mail order would not be required to participate in the national or regional mail order competitive bidding program. However, we would only allow these suppliers to continue furnishing the items in areas if they were selected as a contract supplier.

We propose to allow these non-mail order suppliers to continue furnishing these items in areas subject to a competitive bidding program if the supplier has been selected as a contract supplier. When furnishing items to beneficiaries that do not maintain a permanent residence in a competitive bidding area, non-mail order suppliers would be paid based on the payment amount applicable to the area where the beneficiary maintains his or her permanent residence.

In its September 2004 report (GAO–04–765), the GAO recommended that we consider using mail delivery for items that can be provided directly to beneficiaries in the home as a way to implement a DMEPOS competitive bidding strategy. We are asking for comments on our proposal to implement this recommendation, as well as for comments on the types of items that would be suitable for a mail order competitive bidding program. In addition, we are requesting public comment on an alternative that would require replacement of all supplies such as test strips and lancets for Medicare beneficiaries to be furnished by mail order suppliers under a nationwide or regional mail order program. For example, there are services paid under the physician fee schedule that are associated with the furnishing of blood glucose testing equipment (for example, home blood glucose monitors) such as training, education, assistance with product selection, maintenance and servicing, that do not relate to the furnishing of replacement supplies used with the equipment. Once the brand of monitor has been selected by the patient, the services associated with furnishing the supplies must be provided on a timely basis and the patient must receive the brand of test strips needed for his or her monitor. We invite public comment on whether the service of furnishing replacement test strips, lancets or other supplies can easily, effectively, and conveniently be performed by national mail order suppliers.

d. Additional Competitive Bidding Areas After 2009 (§ 414.410(d))

Section 1847(a)(1)(B)(III) of the Act requires that competition under the Medicare DMEPOS Competitive Bidding Program occur in additional areas after 2009. Beginning in 2010, we would designate through program instructions additional competitive bidding areas based on our determination that the implementation of a competitive bidding program in a particular area would be likely to result in significant savings to the Medicare program.

E. Criteria for Item Selection

If you choose to comment on issues in this section, please include the caption ''Criteria for Item Selection'' at the beginning of your comments.≤

Section 1847(a)(2) of the Act describes the items subject to competitive bidding as follows:

- Durable Medical Equipment and Medical Supplies—Covered items (as defined in section 1834(a)(13) of the Act) for which payment would otherwise be made under section 1834(a) of the Act, including items used in infusion and drugs (other than inhalation drugs) and supplies used in conjunction with DME, but excluding class III devices under the Federal Food, Drug, and Cosmetic Act.
- Other Equipment and Supplies (enteral nutrition, equipment and supplies)—items described in section 1842(s)(2)(D) of the Act, other than parenteral nutrients, equipment, and supplies.
- Off-The-Shelf (OTS) Orthotics—orthotics described in section 1861(s)(9) of the Act for which payment would otherwise be made under section 1834(h) of the Act, which require minimal self-adjustment for appropriate use and do not require expertise in trimming, bending, molding, assembling, or customizing to fit the individual.

We are proposing that minimal self-adjustment would mean adjustments that the beneficiary, caretaker for the beneficiary, or supplier of the device can perform without the assistance of a

certified orthotist (that is, an individual certified by either the American Board for Certification in Orthotics and Prosthetics, Inc. or the Board for Orthotist/Prosthetist Certification). By contrast, we would consider any adjustments that can only be made by a certified orthotist to be adjustments that require an expertise in trimming, bending, molding, assembling, or customizing to fit the individual. We are proposing to consult with a variety of individuals including experts in orthotics to determine which items and/or HCPCS codes would be classified as OTS orthotics. We welcome comments on a process for identifying OTS orthotics subject to competitive bidding.

Section 1847(a)(1)(B)(ii) of the Act gives us the authority to phase in competitive bidding ''first among the highest cost and highest volume items or those items that the Secretary determines have the largest savings potential.'' In addition, section 1847(a)(3)(B) of the Act grants us the authority to exempt items for which the application of competitive bidding is not likely to result in significant savings. In exercising this authority, we propose to exempt items outright or on an area by area basis using area-specific utilization data. For example, if we found that utilization (that is, allowed services or allowed charges) for commode chairs was low (or the number of commode chair suppliers was low) in a given area compared to other areas, we might choose to exempt commode chairs from the competitive bidding program in the CBA where significant savings would not be likely while including commode chairs in the competitive bidding programs for other CBAs. This decision would be based on area-specific utilization data.

We are proposing to use the authority provided by section 1847(a)(1)(B)(ii) of the Act to phase in only those items that we determine are among the highest cost and highest volume items during each phase of the Medicare DMEPOS Competitive Bidding Program. In section II.F. of this preamble, we propose to conduct competitive bidding for product categories that would be described in each RFB. Suppliers will submit a separate bid for each item under a defined product category, unless specifically excluded in the RFB. We propose to include a ''core'' set of product categories in each competitive bidding area. We may elect to phase in some individual product categories in a limited number of competitive bidding areas in order to test and learn about their suitability for competitive bidding.

Because we have not yet identified the product categories for competitive bidding, we are using policy groups developed by the statistical analysis durable medical equipment regional carrier (SADMERC) for purposes of illustration. The SADMERC has defined a set of 64 DMERC policy groups for analytical purposes in its role as the statistical analysis contractor for DMEPOS. A policy group is a set of HCPCS codes that describe related items that are addressed in a DMERC medical review policy. For example, the policy group, oxygen and supplies, consists of approximately 20 HCPCS codes. Although the product categories subject to competitive bidding will not necessarily correspond to these policy groups, we present data for these policy groups and items contained in these policy groups for the purpose of identifying the highest cost and highest volume DMEPOS items that may be subject to competitive bidding. In other words, we propose using SADMERC data for ''policy groups'' to identify groups of items we will consider phasing in first under the competitive bidding programs, but the actual ''product categories'' for which we would request bids could be a subset of items from a ''policy group'' or a combination of items from different ''policy groups.'' The highest volume items (HCPCS codes) fall into a relatively small number of policy groups as illustrated in Table 3.

TABLE 3.—2003 HIGH VOLUME ITEMS

[HCPCS Codes]

HCPCS	Allowed charges	Product description	Product group
E1390	$2,033,123,147	Oxygen concentrator	Oxygen.
K0011*	1,176,277,899	Power wheelchair with programmable features	Wheelchairs.
A4253	779,756,243	Blood glucose/reagent strips, box of 50	Diabetic Supplies & Equipment.
E0260	331,457,962	Semi-electric hospital bed	Hospital Beds/Accessories.
E0431	228,066,037	Portable gaseous oxygen equipment	Oxygen.
B4150*	206,396,813	Enteral formula, category I	Enteral Nutrition.
B4035	197,057,150	Enteral feeding supply kit, pump fed, per day	Enteral Nutrition.
E0277	156,762,241	Powered air mattress	Support Surfaces.
E0439	141,268,474	Stationary liquid oxygen	Oxygen.
E0601	123,865,463	Continuous positive airway pressure device (CPAP).	CPAP Devices.
K0001	103,217,209	Standard manual wheelchair	Wheelchairs.
K0004	87,208,486	High strength lightweight manual wheelchair	Wheelchairs.
A4259	79,575,166	Lancets, box of 100	Diabetic Supplies & Equipment.
E0570	76,588,088	Nebulizer with compressor	Nebulizers.
B4154*	76,326,903	Enteral formula, category IV	Enteral Nutrition.
E0143	75,950,410	Folding wheeled walker w/o seat	Walkers.
K0533*	75,136,517	Respiratory assist device with backup rate feature.	Respiratory Assist Devices.
K0538*	65,603,531	Negative pressure wound therapy electrical pump.	Negative Pressure Wound Therapy (NPWT) Devices.
K0532*	56,046,930	Respiratory assist device without backup rate feature.	Respiratory Assist Devices.
K0003	55,318,959	Lightweight manual wheelchair	Wheelchairs.
K0108	52,139,979	Miscellaneous wheelchair accessory	Wheelchairs.
E0192*	48,413,938	Wheelchair cushion	Support Surfaces.
E0163	48,216,855	Stationary commode chair with fixed arms	Commodes.
B4034	42,277,968	Enteral feeding supply kit syringe, per day	Enteral Nutrition.

* Due to HCPCS coding changes made since 1993, the descriptions or code numbers for several codes above have been modified. We expect that power wheelchairs (K0011) will be billed under several new HCPCS codes in the near future.

Because we propose that we will conduct competitive bidding for items grouped into product categories, we will consider DMEPOS allowed charges and volume at the product category level for the purpose of selecting which items to phase in first under the competitive bidding programs. The table below provides data for the top 20 policy groups based on Medicare allowed charges for the items within each policy group that we may choose to include in a competitive bidding program. Data from the SADMERC for claims received in 2003 is used for all policy groups except those for nebulizers and OTS orthotics. For the nebulizer and OTS orthotics groups, data is included from the CMS BESS (Part B Extract and Summary System) database for items furnished in 2003. The percentage of total allowed Medicare charges for DMEPOS that each policy group makes up is included in Table 4.

TABLE 4.—2003 DMEPOS ALLOWED CHARGES BY POLICY GROUP

Rank	Policy group	2003	Percent of DMEPOS
1	Oxygen Supplies/Equipment	$2,433,713,269	21.3
2	Wheelchairs/POVs**	1,926,210,675	16.9
3	Diabetic Supplies & Equipment	1,110,934,736	9.7
4	Enteral Nutrition	676,122,703	5.9
5	Hospital Beds/Accessories	373,973,207	3.3
6	CPAP Devices	204,774,837	1.8
7	Support Surfaces	193,659,248	1.7
8	Infusion Pumps & Related Drugs	149,208,088	1.3
9	Respiratory Assist Devices	133,645,918	1.2
10	Lower Limb Orthoses*	122,813,555	1.1
11	Nebulizers*	98,951,212	0.9
12	Walkers	96,654,035	0.8
13	NPWT Devices	88,530,828	0.8
14	Commodes/Bed Pans/Urinals	51,372,352	0.5
15	Ventilators	42,890,761	0.4
16	Spinal Orthoses*	40,731,646	0.4
17	Upper Limb Orthoses*	29,069,027	0.3
18	Patient Lifts	26,551,310	0.2
19	Seat Lift Mechanisms	15,318,552	0.1
20	TENS Devices**	15,258,579	0.1
	Total for 20 Groups	7,830,384,538	68.6
	Total for DMEPOS	11,410,019,351	

* Data is from BESS (Date of Service). Data for orthoses policy groups excludes data for custom fabricated orthotics, but may include data for other items that will not be considered OTS orthotics.

** POVs are power operated vehicles (scooters) and TENS devices are transcutaneous electrical nerve stimulation devices.

Section 1847(a)(1)(B)(ii) of the Act provides that the items we phase in first under competitive bidding may include products having the greatest potential for savings. We are proposing to use a combination of the following variables when making determinations about an item's potential savings as a result of the application of competitive bidding.

- Annual Medicare DMEPOS Allowed Charges
- Annual Growth in Expenditures
- Number of Suppliers
- Savings in the DMEPOS Demonstrations
- Reports and Studies

Items with high allowed charges or rapidly increasing allowed charges would be our highest priority in selecting items for competitive bidding.

The number of suppliers furnishing a particular item or group of items would also be an important variable in identifying items with high savings potential. We believe that a relatively large number of suppliers for a particular group of items would likely increase the degree of competition among suppliers and increase the probability that suppliers would compete on quality for business and market share. We saw evidence in the competitive bidding demonstrations that products furnished by a large number of suppliers had large savings rates and fewer problems with quality. We understand that having a large number of suppliers is not always a necessary condition for competition. A competitive bidding area could be more concentrated and less competitive than the number of suppliers would predict if the market is dominated by only a few suppliers and the remaining suppliers have only minimal charges.

The DMEPOS demonstration took place from 1999 to 2002 in two MSAs: Polk County, Florida and San Antonio, Texas. Five product categories containing items we might include in the Medicare DMEPOS Competitive Bidding Program were included in at least one round of the DMEPOS demonstration: Oxygen equipment and supplies; hospital beds and accessories; enteral nutrition; wheelchairs and accessories; and general orthotics.

The demonstration results provide useful information because they are based on actual Medicare competitive bidding and the amounts suppliers actually were willing to accept as payment from Medicare. However, we recognize that these results should be used with caution. The demonstration occurred more than three years ago and the fee schedule has changed as a result of certain provisions in the MMA, such as, section 302(c)(2) (codified at 1834(a)(21) of the Act), which requires that CMS adjust the fee schedules for certain items based on a comparison to other payers such as the Federal employee health plan (FEHP).

The Office of Inspector General (OIG) and the GAO frequently conduct studies that analyze the extent to which Medicare overpays for specific items, and we believe that these studies could assist with determining the saving potential for an item(s) if it were included in competitive bidding. Examples of relevant studies from the OIG include the following:

- Medicare Allowed Charges for Orthotic Body Jackets, March 2000 (OEI–04–97–00391);
- Medicare Payments for Enteral Nutrition, February 2004 (OEI–03–02–00700); and
- A Comparison of Prices for Power Wheelchairs in the Medicare Program, April 2004 (OEI–03–03–00460).

In addition, CMS and the DMERCs obtain retail pricing information for items in the course of establishing fee schedule amounts and considering whether payment adjustments are warranted for items using the inherent reasonableness authority in section 1842(b)(8) of the Act. We could use these studies to identify products where CMS pays excessively and where we could potentially achieve savings.

Excessive payments are only one factor to consider when evaluating whether savings will be realized by the application of competitive bidding to an item. However, these studies do offer us a guide regarding which items may have the greatest potential for savings. We also recognize that some studies are older than others and that recent MMA and FEHP reductions in fees may affect the results of these studies.

F. Submission of Bids Under the Competitive Bidding Program (Proposed § 414.412)

[If you choose to comment on issues in this section, please include the caption ''Submission of Bids Under the Competitive Bidding Program'' at the beginning of your comments.]

Sections 1847(b)(6)(A)(i) and (ii) of the Act state that payment will not be made for items furnished under a competitive bidding program unless the supplier has submitted a bid to furnish those items and has been selected as a contract supplier. Therefore, in order for a supplier that furnishes competitively bid items in a competitive bidding area to receive payment for those items, the supplier must have submitted a bid to furnish those particular items and must have been awarded a contract to do so by CMS. There are limited exceptions to this requirement for beneficiaries who reside in a competitive bidding area but are out of the area and need items. There is also an exception for suppliers that are grandfathered to continue to provide and service certain items, as discussed in section II.C.3. of this preamble.

1. Providers (Proposed § 414.404, § 414.422)

We are proposing that providers that furnish Part B items and are located in a competitively bidding area and are also DMEPOS suppliers, must submit bids in order to furnish competitively bid items to Medicare beneficiaries. Providers that are not awarded contracts must use a contract supplier to furnish these items to the Medicare beneficiaries to whom they provide services. However, a skilled nursing facility (SNF) defined in section 1819(a) of the Act would not be required to furnish competitively bid items to beneficiaries outside of the SNF, if it elected not to function as a commercial supplier. This is consistent with the current practice of some SNFs to furnish Part B services only to their own residents.

2. Physicians (Proposed § 414.404, § 414.422)

We are proposing that physicians that are also DMEPOS suppliers must submit bids and be awarded contracts in order to furnish items included in the competitive biding program for the area in which they provide medical services. Physicians that do not become contract suppliers must use a contract supplier to furnish competitively bid items to their Medicare patients. However, they will not be required to furnish these items to beneficiaries who are not their patients if they choose not to function as commercial suppliers. In proposing this policy for physicians who are also DMEPOS suppliers, we recognize that the physician self-referral law (section 1877 of the Act) generally prohibits physicians from furnishing to their office patients a variety of common DMEPOS items. Physicians who choose to participate in the competitive bidding process must ensure that their arrangements for referring for and furnishing DMEPOS items under a competitive bidding program comply with the physician self-referral law as well as any other Federal or State law or regulation governing billing or claims submission.

We have established a Web site where requests for bids (RFBs) and other pertinent program information will be posted, and we plan to alert the supplier community by e-mail of all postings on this site. In addition, we will be providing education and outreach to suppliers on requirements for submitting RFBs. Suppliers must fully complete the RFB in order to be considered for participation in a competitive bidding program. The RFBs will require suppliers to complete at a minimum such documents as an application, bidding sheet, bank and financial information and referral source references. We will establish an administrative process to ensure that all information that the supplier submitted is accurately captured and considered in the bid evaluation process. This process will ensure that all the information submitted by the supplier is included as part of the bid evaluation process.

We considered requiring all suppliers to be physically located within a competitive bidding area in order to submit a bid to furnish items in that area. However, we feel that this requirement would be too proscriptive. We believe that suppliers that are located outside of a competitive bidding area, but do business in the competitive bidding area and are able to service beneficiaries residing within the CBA should be permitted to submit bids and participate in the competitive bidding program for that area.

3. Product Categories for Bidding Purposes (Proposed § 414.412)

We propose to conduct bidding for items that are grouped into product categories. Suppliers would be required to submit a separate bid for all items that we specify in a product category. The submitted bid must include all costs related to the furnishing of each item such as delivery, set-up, training, and proper maintenance for rental items. However, suppliers would only be required to submit bids for the product categories that they are seeking to furnish under the program. All items that would be included in a product category for bidding purposes would be detailed in the RFB. We propose to define the term ''product category'' as a group of similar items used in the treatment of a related medical condition (for example, hospital beds and accessories). We believe that the use of product categories will allow Medicare beneficiaries to receive all of their related products (for example, hospital beds and accessories) from one supplier, which will minimize disruption to the beneficiary.

There were other design options that we considered but did not propose. One option was to require suppliers to submit a bid for all items in every defined product category. Another option was for suppliers to bid at the HCPCS level and submit a bid only for the individual items that they were seeking to furnish under the program.

There are currently approximately 55 separate policy groups already established by the DMERCs. However, these policy groups were not established for the purpose of competitive bidding. We are proposing to specifically develop product categories for the purpose of competitive bidding. We anticipate that the product categories will range from Breast Prosthesis, Dialysis Equipment and Supplies, to Oxygen and Power Wheelchairs. Each

group would be defined and comprised of individual HCPCS codes.

Section 1847(a)(3)(B) of the Act gives us the authority to exempt items for which the application of competitive bidding is unlikely to result in significant savings. We would propose not to include items in a product category if they are rarely used or billed to the program. In addition, we would not include items within a product category if we believed that these were items for which we might not realize a savings. Therefore, under this approach, we propose to establish product categories to identify those items included in competitive bidding and may establish different product categories from one CBA to another, as well as in different rounds of competitive bidding in the same CBA.

We chose to allow suppliers to submit bids only for the product categories they are seeking to furnish under a competitive bidding program because this option accommodates DMEPOS suppliers who want to specialize in one or a few product categories. For example, if a supplier wants to specialize in the treatment of respiratory conditions, the supplier can choose to bid on all items that fall within the Oxygen product category, the Continuous Positive Airway Pressure product category, or the Respiratory Assist Device product category. We believe that specialization at the product category level will make it easier for referral agents (entities that refer beneficiaries to health care practitioners or suppliers to obtain DMEPOS items) and other practitioners to order related products from the same supplier.

Establishing a bidding process that promotes specialization would allow suppliers to realize economies of scope within a product category, which means that a supplier may be able to furnish a bundle of items at a lower cost than it can produce each individual item. This approach is also more favorable to small suppliers because they can choose to specialize in only one product category. It would be more difficult for a small supplier rather than a large supplier to furnish all product categories. This approach is also more convenient for Medicare beneficiaries, as they can choose to receive all their related supplies from one supplier and would not have to deal with multiple suppliers to obtain the proper items for their condition. We recognize the importance of the relationship between a DMEPOS supplier and the Medicare beneficiary. The supplier delivers the item to the beneficiary, sets up the equipment and also educates the beneficiary on the proper use of the equipment. The use of product categories will facilitate the transition for those beneficiaries who have to change suppliers. It is also our goal to establish a productive relationship between the supplier and the beneficiary, and we believe we can accomplish this goal by designing the competitive bidding program so the beneficiary has the option of selecting one supplier that would be responsible for the delivery of all medically necessary items that fall within a product category.

4. Bidding Requirements (§ 414.408)

In preparing a bid in response to the request for bids, we would propose that suppliers look to our existing regulations at part 414, subparts C and D to determine whether a rental or purchase payment would be made for the item and whether other requirements would apply to the furnishing of that item, as further explained below.

a. Inexpensive or Other Routinely Purchased DME Items

The current fee schedule amounts for these items are based on average reasonable charges for the purchase of new items, purchase of used items, and rental of items from July 1, 1986 through June 30, 1987. In those cases where reasonable charge data from 1986/87 is not available, the fee schedule amounts for the purchase of new items are generally based on retail purchase prices deflated to the 1986/1987 base period by the percentage change in the CPI–U, the fee schedule amounts for the purchase of used items are generally based on 75 percent of the fee schedule amounts for the purchase of new items, and the fee schedule amounts for the monthly rental of items are generally based on 10 percent of the fee schedule amounts for purchase of new items. This method of establishing fee schedule amounts in the absence of reasonable charge data has been in use since 1989. Under the Medicare DMEPOS Competitive Bidding Program, we propose that bids be submitted only for the furnishing of new items in this category that are included in a competitive bidding program. Based on the bids submitted and accepted for these new items, we would propose to also calculate a single payment amount for used items based on 75 percent of the single payment amount for new items. In addition, we would propose to calculate a single payment amount for the rental of these items based on 10 percent of the single payment amount for new items. We believe that calculating single payment amounts for used items and items rented on a monthly basis based on bids submitted and accepted for new items will simplify the bidding process and will not create problems with access to used items or rented items in this category.

b. DME Items Requiring Frequent and Substantial Servicing

We propose that bids be submitted for the monthly rental of items in this payment category with the exception of continuous passive motion exercise devices. We propose that bids be submitted for the daily rental of continuous passive motion exercise devices. For items in this category other than continuous passive motion exercise devices, this is consistent with § 414.222(b) our regulations. Coverage of continuous passive motion exercise devices is limited to 21 days of use in the home following knee replacement surgery; therefore, payment can only be made on a daily basis as opposed to a monthly basis for this item.

Based on the bids submitted and accepted for these items, we would calculate single payment amounts for the furnishing of these items on a rental basis.

c. Oxygen and Oxygen Equipment

If included under a competitive bidding program, we would propose that the single payment amounts for oxygen and oxygen equipment be calculated based on separate bids submitted and accepted for furnishing on a monthly basis of each of the oxygen and oxygen equipment categories of services described in § 414.226(b)(1)(i) through (b)(1)(iv).

d. Capped Rental Items

With the exception of power wheelchairs, payment for items that fall into this payment category is currently made on a rental basis only. The rental fee schedule payments for months 1 through 3 are based on 10 percent of the purchase price for the item as determined under § 414.229(c). The rental fee schedule payments for months 4 through 15 are based on 7.5 percent of the purchase price for the item as determined under § 414.229(c). Since the DRA change does not apply to beneficiaries using a capped rental item prior to January 1, 2006, these beneficiaries may still elect either to take ownership of the item after 13 months of continuous use or to continue renting the item beyond 13 months of continuous use. In addition, the DRA leaves in tact the rule under which a supplier must offer the beneficiary the option to purchase a power wheelchair

at the time the supplier initially furnishes the item (in which case payment would be made for the item on a lump-sum basis). However, with regard to all other capped rental items for which the rental period begins after January 1, 2006, the DRA requires suppliers to transfer title to the item to the beneficiary after 13 months of continuous use. Under the Medicare DMEPOS Competitive Bidding Program, we propose that separate payment for reasonable and necessary maintenance and servicing only be made for beneficiary-owned DME. Payment for maintenance and servicing of rented equipment would be included in the single payment amount for rental of the item. We propose that the lump sum purchase option in § 414.229(d) for power wheelchairs be retained under the Medicare DMEPOS Competitive Bidding Program.

Under the Medicare DMEPOS Competitive Bidding Program, we propose that ''purchase'' bids be submitted for the furnishing of new items in this category. Based on these bids, a single payment amount for purchase of a new item will be calculated for each item in this category for the purpose of determining both the single payment amount for the lump sum purchase of a new power wheelchair, and for calculating the single payment amounts for the rental of all items in this category. In cases where the beneficiary elects to purchase a used power wheelchair the single payment amount for the lump sum purchase of the used power wheelchair would be based on 75 percent of the single payment amount for a new power wheelchair. In the case of all items in this category that are furnished on a rental basis, the single payment amount for rental of the item for months 1 through 3 would be based on 10 percent of the single payment amount for purchase of the item, and the single payment amount for rental of the item for months 4 through 13 would be based on 7.5 percent of the single payment amount for purchase of the item. We believe that calculating single payment amounts for used items and items rented on a monthly basis based on bids submitted and accepted for new items will simplify the bidding process and will not result in problems with access to used items or rented items in this category.

e. Enteral Nutrition Equipment and Supplies

Enteral nutrition equipment is currently paid on a purchase or rental basis. Section 6112(b)(2)(A) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) (OBRA 89) limits the rental payments to 15 months. To be consistent with the bidding requirements proposed above for capped rental DME, we propose that bids be submitted for the purchase of new items in this category. Based on the bids submitted and accepted for new items, we would calculate a single payment amount for rented items for months 1 through 3 based on 10 percent of the single payment amount for new items. The single payment amount for rented items for months 4 through 15 would be based on 7.5 percent of the single payment amount for new items. In cases where the beneficiary elects to purchase enteral nutrition equipment, the single payment amount for new enteral nutrition equipment would be based on the bids submitted and accepted for new enteral nutrition equipment, and the single payment amount for used enteral nutrition equipment would be based on 75 percent of the single payment amount for the purchase of new enteral nutrition equipment.

Based on the bids submitted and accepted for new items, we would calculate a single payment amount for purchase of enteral nutrients and supplies.

f. Maintenance and Servicing of Enteral Nutrition Equipment

Section 6112(b)(2)(B) of OBRA 89 requires payment for maintenance and servicing of enteral nutrition equipment after monthly rental payments have been made for 15 months. The maintenance and servicing payments are to be made in amounts that we determine are reasonable and necessary to ensure the proper operation of the equipment. Since October 1, 1990, program instructions have specified when and how these payments are made. These program instructions are currently found at section 40.3 of chapter 20 of the Medicare Claims Processing Manual (pub. 100–04). These instructions provide that maintenance and servicing payments may be made beginning 6 months after the last rental payment for the equipment and no more often than once every 6 months for actual incidents of maintenance where the equipment requires repairs and/or extensive maintenance. Extensive maintenance involves the breaking down of sealed components or performance of tests that require specialized testing equipment not available to the beneficiary or nursing facility. The program instructions also state that the maintenance and servicing payments cannot exceed one-half of the rental payment amounts for the equipment. Under the Medicare DMEPOS Competitive Bidding Program, we propose that the monthly rental payments for enteral nutrition equipment for months 1 through 3 be equal to 10 percent of the single payment amounts for the purchase of the new enteral nutrition equipment. We propose that for months 4 through 15, the monthly rental payment amounts would be equal to 7.5 percent of the single payment amounts for the purchase of new items. In addition, we propose to establish the maintenance and service payments for enteral nutrition equipment so that they are equal to 5 percent of the single payment amounts for the purchase of new enteral nutrition equipment. This would limit the payment rate for maintenance and service to one-half of the rental payment amount for the first month of rental, which is similar to the program instructions mentioned above. We are proposing that the contract supplier to which payment is made in month 15 for furnishing enteral nutrition equipment on a rental basis must continue to furnish, maintain and service the pump for as long as the equipment is medically necessary. This proposed policy is similar to current Medicare payment rules in Chapter 20 of the claims processing manual, section 40.3.

g. Supplies Used in Conjunction With DME

We propose that bids be submitted for the purchase of supplies necessary for the effective use of DME, including drugs (other than inhalation drugs). Based on the bids submitted and accepted for these items, we would calculate single payment amounts for the furnishing of these items on a purchase basis.

h. OTS Orthotics

We propose that bids be submitted for the purchase of OTS orthotics. Based on the bids submitted and accepted for these items, we would calculate single payment amounts for the furnishing of these items on a purchase basis.

G. Conditions for Awarding Contracts (Proposed § 414.414)

[If you choose to comment on issues in this section, please include the caption ''Conditions for Awarding Contracts'' at the beginning of your comments.]

1. Quality Standards and Accreditation (Proposed § 414.414(c))

Section 1847(b)(2)(A)(i) of the Act specifies that a contract may not be awarded to any entity unless the entity meets applicable quality standards specified by the Secretary under section

1834(a)(20) of the Act. Section 1834(a)(20) instructs the Secretary to establish and implement quality standards for all DMEPOS suppliers in the Medicare program, not just for suppliers in the competitive bidding areas. All suppliers will have to meet these quality standards to be eligible to submit claims to the Medicare program, irrespective of the competitive bidding program. The quality standards are to be applied by recognized independent accreditation organizations designated by the Secretary under section 1834(a)(20)(B) of the Act. A grace period may be granted for suppliers that have not had sufficient time to obtain accreditation before submitting a bid. If a supplier does not then successfully attain accreditation, we will suspend or terminate the supplier contract. The length of time for the grace period will be determined by the accrediting organizations' ability to complete the accrediting process within each competitive bidding area. The length of time of the grace period will be specified in the RFB for each competitive bidding program. We solicit public comments on the length of time for the grace period.

Suppliers that received a valid accreditation before CMS-approved accreditation organizations are designated will be considered to be grandfathered if the accreditation was granted by an organization that we designate through the process described in proposed § 424.58. These suppliers will not need to be re-accredited until their next regularly scheduled accreditation.

2. Eligibility (Proposed § 414.414(b))

We propose that all bidders must meet eligibility rules to be considered for selection under the Medicare DMEPOS Competitive Bidding Program. The eligibility rules are included in the supplier standards regulation at § 424.57. Also, each bidder must be enrolled with Medicare and be a current supplier, in good standing with the Medicare program, and not under any current Medicare sanctions. Each bidding supplier must certify in its bid that it, its high level employees, chief corporate officers, members of board of directors, affiliated companies and subcontractors are not now and have not been sanctioned by any governmental agency or accreditation or licensing organization. In the alternative, the bidding supplier must disclose information about any prior or current legal actions, sanctions, or debarments by any Federal, State or local program, including actions against any members of the board of directors, chief corporate officers, high-level employees, affiliated companies, and subcontractors.

Sanctions would include, but are not limited to, debarment from any Federal program, sanctions issued by the Office of Inspector General, or sanctions issued at the State or local level. In addition, the bidder must have all State and local licenses required to furnish the items that are being bid. Finally, the supplier must agree to all of the terms in the contract outlined in the RFBs. We would suspend or terminate a contract if a supplier loses its good standing with us or any other government agency.

3. Financial Standards (Proposed § 414.414(d))

Section 1847(b)(2)(A)(ii) specifies that we may not award a contract to an entity unless the entity meets applicable financial standards specified by the Secretary. Evaluation of financial standards for suppliers assists us in assessing the expected quality of suppliers, estimating the total potential capacity of selected suppliers, and ensuring that selected suppliers are able to continue to serve market demand for the duration of their contracts. Ultimately, we believe that financial standards for suppliers will help maintain beneficiary access to quality services.

Therefore, as part of the bid selection process, the RFBs will identify the specific information we will require to evaluate suppliers, which may include: a supplier's bank reference that reports general financial condition, credit history, insurance documentation, business capacity and line of credit to successfully fulfill the contract, net worth, and solvency. We welcome comments on the financial standards, in particular the most appropriate documents that will support these standards.

We found that in the demonstration, general financial condition, adequate financial ratios, positive credit history, adequate insurance documentation, adequate business capacity and line of credit, net worth, and solvency, were important considerations for evaluating financial stability.

As we develop our methodology for financial standards, we will further consider which individual measures should be required so that we can obtain as much information as possible while minimizing the burden on bidding suppliers and the bid evaluation process.

4. Evaluation of Bids (Proposed § 414.414(e))

We are proposing to select the product categories that include individual items for which we will require competitive bidding. Individual products will be identified by the Healthcare Common Procedure Coding System (HCPCS Codes) and will be further described in the RFB. Suppliers will be required to submit bids for each individual item within each product category they are seeking to furnish under the program, but will not be required to bid for every product category.

a. Market Demand and Supplier Capacity (Proposed § 414.414(e))

Section 1847(b)(4)(A) of the Act requires that in awarding competitive bidding contracts, the Secretary must select the number of contract suppliers necessary to furnish items to meet the projected demand in the geographic area. Therefore, the first step is for us to determine the expected demand for an item in a competitive bidding area. We propose to calculate expected demand in each competitive bidding area in a relatively straightforward way using existing Medicare claims. We will examine claims data to determine the number of units of each item supplied to Medicare beneficiaries during the past 2 years, and then determine the number of new beneficiaries that have entered the market during the last 2 years. We feel that 2 years worth of data is sufficient to allow us to identify trend analyses and utilization measurements. We will also gather data on the number of new fee-for-service Medicare enrollees coming into a competitive bidding area and use this number to project the number of new enrollees.

We propose to calculate two years worth of claims on a monthly basis to determine beneficiary demand. We will take into consideration the expected demand over the total duration of the contract and the seasonal effects (for example, an increase in beneficiary population in Florida during the winter), and propose to use 2 years of data to identify any time trends. If there are no seasonal effects or time trends, we propose to use the average monthly total and new patient figures as the market demand measures. If there are seasonal effects or changes identified only during certain months, the maximum monthly total and new patient figures would be used as the market demand measures. If trends show that there is noticeable growth or reduction in beneficiary demand for products in an area, we would take these factors into consideration when developing estimates of beneficiary demand for competitively bid items.

We propose to adopt the following approach to estimate supplier capacity

to meet the projected demand in a CBA. First, we propose to analyze Medicare claims to determine how many items a supplier is currently providing in the competitive bidding area, as well as in total. Second, as part of the bid, we would ask suppliers to say how many units they are willing and capable of supplying at the bid price in the CBA. We would compare this information to what the supplier has dispensed to Medicare beneficiaries in the past and what it specified in its response to the RFB as its projected capacity. We would require evidence of financial resources to support market expansion, such as letters from investors or lending agents. We would use this information to evaluate the capacity of the bidder. Third, we would compare expected capacity and Medicare volume to determine how many suppliers we would need in an area. For new suppliers, we would ask them for their expected capacity, look at trend data for new suppliers in that area, and examine the capacity of other suppliers in that area. We would need to use this data to make estimates about capacity because suppliers may have more capacity potential than they are currently exhibiting. During the DMEPOS demonstration, demonstration suppliers were able to expand their output to meet market demand and replace market share previously provided by non-demonstration suppliers; indeed, some demonstration suppliers were disappointed that they did not gain more market share during the demonstration. We presented numerous issues to the PAOC where we requested advice on issues such as market capacity and demands. During the February 28, 2005 PAOC meeting, we asked the panel to discuss the issue of demand and capacity. Several members of the committee, based upon their expertise and knowledge of the industry, suggested that most DMEPOS suppliers would be able to easily increase their total capacity to furnish items by up to 20 percent and the increase could be even larger for products like diabetes supplies that require relatively little labor.

We welcome comments on our proposed approach for calculating market demand and estimating supplier capacity. We are especially interested in any information that would help us compare current Medicare volume with potential capacity, including potential formulas we could apply to determine capacity.

b. Composite Bids (Proposed § 414.414(e))

When suppliers are bidding for multiple items in a product category, the lowest bid for each item will not always be submitted by the same supplier. In this case, looking at the bids for individual items would not tell us which supplier should be selected since different suppliers may submit the lowest bids for different items. Therefore, we propose to use a composite bid to compare all of the suppliers' bids submitted for an entire product category in a CBA. Using a composite bid is a way to aggregate a supplier's bids for individual items within a product category into a single bid for the whole product category. This will allow us to determine which suppliers can offer the lowest expected costs to Medicare for all items in a product category. To compute the composite bid for a product category, we would multiply a supplier's bid for each item in a product category by the item's weight and sum these numbers across items. The weight of an item would be based on the utilization of the individual item compared to other items within that product category based on historic Medicare claims. Item weights would be used to reflect the relative market importance of each item in the product category. We would select item weights that ensure that the composite bid is directly comparable to the costs that Medicare would pay if it bought the expected bundle of items in the product category from the supplier. The sum of each supplier's weighted bids for every item in a product category would become the supplier's composite bid for that product category.

We seek comment on the best method of weighting individual items within a product category to determine the composite bid. One approach we are considering is to set the weight for each item based on the volume of the individual item's share compared to the total utilization of the product category. Under this weighting system, the composite bid would be exactly proportional to the expected cost of furnishing the entire bundle of items. Therefore, if supplier 1 had a lower composite bid than supplier 2, it would also have a lower expected cost of furnishing the entire product bundle that makes up the product category. Another approach we are considering is to set the weight based on the payment amounts attributable to each DMEPOS fee schedule item relative to the overall payment amount for the total product category. This approach may better reflect the relative value of each item because it is based on how much we actually pay for an item. This is the approach that we used in the round 1 bidding in Polk County under the competitive bidding demonstration program. However, we found that this approach could result in too much weight being placed on low volume and high-priced items. The first year evaluation report also found that using the allowed charges as the weights could result in a supplier who offered lower bids having a higher composite bid than a supplier who offered a higher bid for individual items.

We use volume of items or units as the basis of the following examples but we are requesting comments on which weighting method should be used in calculating the composite. We also request comments on other methods of weighting that could be applied to individual items.

TABLE 5.—ITEM WEIGHTS

Item	A	B	C	All
Units	5	3	2	10
Item Weight	0.5	0.3	0.2	1

The example above shows how a proposed weight setting methodology would work. The expected volume for Items A, B, and C are 5, 3, and 2 units, respectively, for a total volume of 10 units. The item weight for Item A is 0.5 (5/10), the weight for Item B is 0.3 (3/10), etc.

As explained above, the composite bid for a supplier would equal the item weight times the item bid summed across all items in the product category. The item weights would be the same for bidders for the same product categories. In our example, supplier 1 bid $1.00 for item A, $4.00 for item B and $1.00 for item C. The composite bid for Supplier 1 = (0.5 * $1.00) + (0.3 * $4.00) + (0.2 * $1.00) = 1.90. The table shows the expected cost of the bundle based on

each supplier's bids. The expected costs are directly proportional to the composite bids; the factor of proportionality is equal to the total number of units (10) in the product category. We used the composite bid to determine the expected costs for all of the items in the product category based upon expected volume.

TABLE 6.—COMPOSITE BIDS

Item	A	B	C	Composite bid	Expected cost of bundle
Units	5	3	2		
Item weight	0.5	0.3	0.2		
Supplier 1 bid	$1.00	$4.00	$1.00	$1.90	$19.00
Supplier 2 bid	$3.00	$3.00	$2.00	2.80	28.00
Supplier 3 bid	$2.00	$2.00	$2.00	2.00	20.00
Supplier 4 bid	$1.00	$2.00	$2.00	1.50	15.00

Under this proposed methodology, bid selection would proceed by ranking the composite bids from lowest to highest (Table 6). In order to ensure that we would pay less under competitive bidding than we would under the current fee schedule, as is required under section 1847(b)(2)(A)(iii), we would compute the expected cost of the bundle of goods for comparison purposes. This would require us to calculate the bid amount times the expected number of units that we expect suppliers will furnish based on the most current Medicare claims data and sum across each item by supplier. For example, if supplier 1 bid $1.00 for item A and we expected to purchase 5 units—$1.00 × 5 units = $5.00, item B—$4.00 × 3 units = $12.00, item C—$1.00 × 2 units = $2.00, the sum for these 3 items would be $19.00. As previously noted, prior to bid selection we would first ensure that suppliers meet quality and financial standards prior to arraying the bids and selecting suppliers.

c. Determine the Pivotal Bid (Proposed § 414.414(e))

We propose that the pivotal bid would be the point where expected combined capacity of the bidders is sufficient to meet expected demands of beneficiaries for items in a product category. In the example below, the projected demand would be for 1000 units, therefore supplier 10's composite bid would represent the pivotal bid, since the cumulative capacity of 1100 would exceed the projected demand of 1000. The statute requires multiple winners, so in all cases where we award bids, we would need to accept at least two winning bidders. All bidders who are eligible for selection and whose composite bid for the product category is less than or equal to the pivotal bid would be selected as winning bidders. In the table below, for example, $135.00 would be the pivotal bid. Suppliers 2, 3, 1, and 10 would then be selected as winning bidders with supplier 10's composite bid becoming the pivotal bid. We realize that this approach may leave out other suppliers with very close, but slightly higher bids.

TABLE 7.—DETERMINE THE PIVOTAL BID

[Point where beneficiary demand is met by supplier capacity—for this example, beneficiary expected demand is 1000 units—supplier 10's bid is the pivotal bid]

Supplier number	Eligible for selection	Composite bid	Supplier capacity	Cumulative capacity
2	Yes	$100	100	100
3	Yes	115	300	400
1	Yes	120	400	800
10	Yes	135	300	1100
4	Yes	140	500	1600
7	Yes	150	100	1700
No longer being considered:				
5	No	120	n.c.	n.c.
6	No	130	n.c.	n.c.
8	No	175	n.c.	n.c.
9	No	200	n.c.	n.c.

n.c. = not calculated.

We also considered the use of a competitive range to determine the contract suppliers. In this approach we would determine a competitive range for the composite bid. We would array all suppliers by their bids and eliminate all suppliers whose composite bid is greater than the competitive range. We would then evaluate the quality and financial standards only for those remaining suppliers.

During the demonstration, evaluating quality and financial standards was time-consuming for the bid evaluation panel and required bidders to provide extensive information on quality and finances. The last two rounds of the demonstration used a competitive range to reduce the burden on the bid evaluation panel and bidders. After evaluating basic eligibility requirements, the composite bids were calculated and arrayed, and a competitive range was selected with more than enough suppliers to serve the market. Suppliers whose composite bids were clearly outside of this range were not required to provide detailed financial information, and the bid panel was not required to evaluate the eligibility of these suppliers to participate. Suppliers within the competitive range provided detailed financial information and had their quality rigorously evaluated. The

remaining suppliers were only selected as contract suppliers if they met the quality and financial standards and their composite bids were at or below the pivotal bid.

There are other options that we have considered to determine the pivotal bid. One of these options would be to make the pivotal bid depend on one of the summary statistics (for example, mean, median, 45th percentile) associated with the distribution of bids from eligible suppliers. For example, the pivotal bid could be set equal to the median bid from eligible suppliers. This option has the advantage that the pivotal bid could be set near the central distribution of bids. We considered including additional suppliers who are close to the central distribution as being eligible to become a contract supplier. Both options would likely affect the number of contract suppliers. Finally, the exact summary statistic or percentile can be increased or decreased to reflect our trade-off between the number of winners and program costs. One negative aspect of this approach would be that winners may have insufficient capacity. In addition, with a given percentile cutoff, the pivotal bid might include an excessive number of winning bidders. As the number of eligible bidders increases, so does the number of winners. If additional bidders have higher costs, and their bids fall into the upper half of the distribution, the pivotal bid will increase, resulting in greater payments by the Medicare program and a loss of savings.

Another option would be to base the pivotal bid on a target number of winners. For example, we may decide to select 5 winners in each product category. Suppliers may respond to this approach by bidding aggressively, knowing that only a fixed number of winners are guaranteed to be selected. A negative aspect of this approach is that there is no assurance that a predetermined target number of winners would have sufficient capacity to meet projected market demand. In addition, the target number of winners must somehow be selected and this could result in selecting an arbitrary number. If too high, suppliers may have little incentive to bid aggressively.

We also considered an option to base the pivotal bid on a target composite bid, for example, we would choose a target that was 20 percent below the DMEPOS fee schedule amount for that product category. A possible advantage of this approach is that the target composite bid can be set to ensure savings for the program. On the other hand, we believed that suppliers might perceive this approach to be anticompetitive. Rather than letting bidding and the market forces determine the pivotal bid and fee schedule we might have been viewed as pre-ordaining the outcome. In addition, suppliers that bid below the target composite bid might have had insufficient capacity to meet projected market demand.

We are proposing that the pivotal bid be at the point where we have a sufficient number of suppliers to ensure we have enough capacity to meet projected demand and that beneficiaries have adequate access to quality items.

d. Assurance of Savings (Proposed § 414.414(f))

Section 1847(b)(2)(A)(iii) of the Act prohibits awarding contracts to any entity for furnishing items unless the total amounts to be paid to contractors in a competitive bidding area are expected to be less than the total amounts that would otherwise be paid. We are proposing to interpret this requirement to mean that contracts will not be awarded to any entity unless the amounts to be paid to contract suppliers in a competitive bidding area are expected to be less for a competitively bid item than would have otherwise been paid. Therefore, we would not accept any bid for an item that is higher than the current fee schedule amount for that item. This approach would require that single payment amounts for each item in a product category be equal to or less than our current fee schedule amount for that item.

An alternative interpretation of ''less than the total amounts that would otherwise be paid'' could mean contracts will not be awarded to an entity unless the amounts paid to contract suppliers in a CBA for the product category are expected to be less than that would have otherwise been paid. During the demonstration, several product categories received overall savings, whereas payment amounts increased for a few individual items within those product categories. This approach may not result in adequate savings, and we believe a reasonable interpretation of the Act would be one in which ''the total amounts'' mean payment at the item level. One concern with this approach is that there may be a greater potential for shifting of utilizations from one item to another higher priced item.

We specifically request comments on the various methods for assuring savings under the Medicare DMEPOS Competitive Bidding Program.

e. Assurance of Multiple Contractors (Proposed § 414.414(g))

Section 1847(b)(4)(B) of the Act specifies that the Secretary will award contracts to multiple entities submitting bids in each area for an item. In addition, section 1847(b)(2)(A)(iv) of the Act specifies that contracts may not be awarded unless access of individuals to a choice of multiple suppliers is maintained. As a result, we will have multiple contract suppliers in each competitive bidding area for each product category if at least two suppliers meet all requirements for participation, and the single payment amounts to be paid to those suppliers do not exceed the fee schedule amounts for the items that were bid. We know that offering choices to beneficiaries, referral agents, and treating practitioners that order DMEPOS for Medicare beneficiaries is important to maintain competition among suppliers based on quality of items. We have to weigh that advantage against the disincentive for a supplier to submit its best bid if we select too many suppliers to service a competitive bidding area. Therefore, we believe that having multiple suppliers servicing one product category in a competitive bidding area will allow us to accomplish these goals.

f. Selection of New Suppliers After Bidding (Proposed § 414.414(h))

We are proposing to select only as many suppliers as necessary to ensure we have enough capacity to meet projected demand. However, we may have to suspend or terminate a contract supplier's contract if that supplier falls out of compliance with any of the requirements identified in the regulation and in the bidding contract. Alternatively, we could determine that the number of contract suppliers we selected to furnish a product category under a competitive bidding program was insufficient to meet beneficiary demand for those items. In situations where CMS determines that there is an unmet demand for items, for example, if CMS terminates a contract supplier's contract, we would propose to contact the remaining contract suppliers for that product category to determine if they could absorb the unmet demand. If the remaining contract suppliers could not absorb the unmet demand in a timely manner, we would propose to then refer to the list of suppliers that submitted bids for that product category in that round of competitive bidding in that competitive bidding area, use the list of composite bids that we arrayed from lowest to highest, and proceed to the next supplier on the list. We would

contact that supplier to determine if it would be interested in becoming a contract supplier. If the supplier was interested, we would require the supplier to provide updated information to ensure its continued eligibility for participation. A condition for acceptance of a contract would be that the supplier must agree to accept the already determined single payment amounts for the individual items within the product category in the competitive bidding area. We would continue to go down the list until we were satisfied that the expected demand would be met and beneficiary access to the items in the product category would not be a problem. After consultation with the DMEPOS industry and PAOC, CMS was told that additional capacity should not be a problem as suppliers would be willing and able to handle the expected demand.

Another option that we considered, but are not proposing, was to conduct a new round of bidding to select additional suppliers. However, we did not choose this option because it would delay the resolution of an access problem and place an additional administrative burden on the program.

H. Determining Single Payment Amounts for Individual Items (Proposed § 414.416)

[If you choose to comment on issues in this section, please include the caption ''Determining Single Payment Amounts for Individual Items'' at the beginning of your comments.]

1. Setting Single Payment Amounts for Individual Items (Proposed § 414.416(b))

Section 1847(b)(5)(A) of the Act requires that the Secretary determine a single payment amount for each item in each competitive bidding area based on the bids submitted and accepted for that item. Once contract suppliers are selected for a product category based on their composite bid and the pivotal bid, single payment amounts for individual items in the product category must be determined. We are considering several different methodologies for determining the single payment amounts. Each of the options under consideration are discussed in detail in this section. After careful consideration of these options, we are proposing to adopt the following principles to determine the single payment amounts for individual items in a product category:

Principle 1

Bid amounts from all winning bids for an item in a CBA will be used to set the single payment amount for that item in the CBA.

Principle 2

We must expect to pay less for each individual item than we would have otherwise paid for that item under the current fee schedule. Single payment amounts cannot be higher than our current fee schedule amounts for individual items within a product category.

To satisfy these principles, we evaluated several different approaches to setting payment amounts. As a result of our review, we have decided on a preferred approach that would determine the single payment amounts for individual items by using the median of the supplier bids that are at or below the pivotal bid for each individual item within each product category. The individual items would be identified by the appropriate HCPCS codes. The median of the bids submitted by the contract suppliers for a particular item would be the single payment amount that we would establish under the competitive bidding program for the HCPCS code that describes that item. In cases where there is an even number of winning bidders for an item, we would employ the average (mean) of the two bid prices in the middle of the array to set the single payment amount.

We believe that setting the single payment amount based on the median of the contract suppliers' bids satisfies the statutory requirement that single payment amounts are to be based on bids submitted and accepted. This will result in a single payment for an item under a competitive bidding program that is representative of the winning bids for that item. This methodology also has the advantage of being easily understood by suppliers and implemented by our contractors. It also results in what we consider to be a reasonable payment amount based on prices available in the marketplace. As illustrated in Table 8, this methodology would reduce the effect of excessively high or excessively low bids and would also help to ensure savings for the Medicare program. We believe it is also consistent with the intent of competitive bidding.

TABLE 8.—MEDIAN OF THE WINNING BIDS

Item	A	B	C	Actual composite bid
Supplier 4 bid	$1.00	$2.00	$2.00	$1.50
Supplier 1 bid	1.00	4.00	1.00	1.90
Supplier 3 bid	2.00	2.00	2.00	2.00
Median of winning bids—Single payment amount	1.00	2.00	2.00	.....

While this is our proposed approach, we are soliciting comments on other methodologies for setting the single payment amount, including using an adjustment factor as part of the methodology for setting the single payment amount. This was the methodology we used for the competitive bidding demonstrations, and it would require the following steps. The first step of this methodology would be to calculate the average of the winning bids per individual item. The second step would be to calculate the average of the composite bids by taking the sum of the composite bids for all contract suppliers in the applicable CBA and dividing that number by the number of contract suppliers. The third step would be to determine an adjustment factor, the purpose of which would be to bring every winner's overall bids for a product category up to the pivotal bidder's composite bid. Once we determined the adjustment factor, we would take the average of the winning bids per item and multiply that by the adjustment factor to adjust all bids up to the point of the pivotal bid, so that all winners would be paid by Medicare as much for the total product category as the pivotal bidder. This amount would become the single payment amount for the individual item. This is the price that all contract suppliers within a competitive bidding area would be paid for that product as illustrated in Table 9.

TABLE 9.—ADJUSTING THE AVERAGE WINNING BIDS

Item	A	B	C	Average composite bid	Actual composite bid
Supplier 4 bid	$1.00	$2.00	$2.00		$1.50
Supplier 1 bid	1.00	4.00	1.00		1.90
Supplier 3 bid	2.00	2.00	2.00		2.00
Supplier 2 bid	N/A	N/A	N/A		N/A
Average of winning bids	1.33	2.67	1.67	1.80	
Adjustment factor = (Pivotal Composite Bid) / (Average Composite Bid)	1.11	1.11	1.11		
Adjusted average bids—single payment amount per item	1.48	2.96	1.85		

This approach would ensure that the overall payment amounts that contract suppliers received was at least as much as their bids. As a result, this may have guarded against suppliers leaving the Medicare program because the payment amounts are not sufficient. However, we do not favor this alternative because, in general, most payment amounts would be higher than the actual bids as a result of the adjustment factor being greater than zero. This is true because the purpose of the adjustment factor would have been to make the composite bid of all winning suppliers equivalent to the composite bid of the pivotal supplier. While this approach is still under consideration, we are considering whether this approach is reflective of the actual winning bids accepted. Also, we are concerned that this methodology may be confusing and overly complicated.

We also considered taking the minimum winning bid for each item in a CBA and not applying an adjustment factor. We do not favor this alternative because we also do not consider it as being reflective of the actual bids accepted because it is only reflective of the lowest bid. The lowest bid would not be reflective of what suppliers would sell the item for since most of them bid higher.

Finally, we considered taking the maximum winning bid for each item. However, this approach would have led to program payment amounts that were higher than necessary because some suppliers were willing to provide these items to beneficiaries at a lower cost.

We are still in the process of determining the appropriate approach for setting payment amounts, as well as the alternatives considered and outlined above and invite comments on our proposed methodology. We will consider all comments in the final regulation.

2. Rebate Program (Proposed § 414.416(c))

We are proposing to allow contract suppliers that submitted bids for an individual item below the single payment amount to provide the beneficiary with a rebate. The rebate would be equal to the difference between their actual bid amount and the single payment amount. The following example illustrates how the rebates would be applied:

If, based on the bids received and accepted for an item, we determined that the single payment amount for the item was $100, Medicare payment for the item would be 80 percent of that amount, or $80, and the co-insurance amount for the item would be 20 percent, or $20. However, if a contract supplier submitted a bid of $90 for this item and chose to offer a rebate, the rebate amount would be equal to the difference between the single payment amount ($100) and the contract supplier's actual bid ($90), or $10. Therefore, after the contract supplier received the Medicare payment of $80 and the $20 co-insurance, the contract supplier would be responsible for providing the beneficiary with a $10 rebate. We are soliciting comments on how to handle those cases in which the rebates would exceed the co-payment amount.

Before deciding to propose this methodology, we considered whether to make the rebates mandatory or optional. We are proposing that the rebates be voluntary but that contract suppliers cannot implement them on a case by case basis. If a contract supplier submits a bid below the single payment amount and chooses to offer a rebate, it must offer the rebate to all Medicare beneficiaries receiving the competitively bid item to which the rebate applies. This commitment would be incorporated into the contract supplier's contract. Stated another way, while the decision to offer rebates may be voluntary, once a contract supplier decides to provide rebates, the rebates become a binding contractual condition for payment during the term of the contract with CMS. Moreover, the contract supplier may not amend or otherwise alter the provision of rebates during the term of the contract. Contract suppliers would also be prohibited from directly or indirectly advertising these rebates to beneficiaries, referral sources, or prescribing health care professionals. However, this would not preclude CMS from providing to beneficiaries comparative information about contract suppliers that offer rebates.

Only contract suppliers that submitted bids below the single payment amount for a competitively bid item would have the choice to offer rebates. Contract suppliers that submitted bids above the single payment amount would not be allowed to issue rebates because their actual bids for an individual item would be above this amount.

Our reasons for allowing these contract suppliers to offer rebates is to allow beneficiaries the ability to realize additional savings and the full benefits of the Medicare DMEPOS Competitive Bidding Program.

We are asking for comments concerning the rebate process outlined in this proposed rule. CMS will continue to evaluate the fraud and abuse risks of the proposed rebate program, and we are specifically soliciting comments on such risks.

I. Terms of Contracts (Proposed § 414.422)

[If you choose to comment on issues in this section, please include the caption ''Terms of Contract'' at the beginning of your comments.]

Section 1847(b)(3)(A) of the Act gives the Secretary the authority to specify the terms and conditions of the contracts used for competitive bidding. Section 1847(b)(3)(B) requires the Secretary to recompete contracts under the Medicare DMEPOS Competitive Bidding Program at least every 3 years. The length of the contracts may be different for different product categories, and we propose to specify the length of each contract in the Request for Bids.

1. Terms and Conditions of Contracts

We propose that the competitive bidding contracts will contain, at a

minimum, provisions relating to the following:

- Covered product categories and covered beneficiaries, operating policies.
- Subcontracting rules.
- Cooperation with us and our agents.
- Potential onsite inspections.
- Minimum length of participation.
- Terms of contract suspension or termination.
- Our discretion not to proceed if we find that the Medicare program will not realize significant savings as a result of the program.
- Compliance with changes in Federal laws and regulations during the course of the agreement.
- Non-discrimination against beneficiaries in a competitive bidding area (so that all beneficiaries inside and outside of a competitive bidding area receive the same products that the contract supplier would provide to other customers).
- Supplier enrollment and quality standards.
- The single payment amounts for covered items.
- Other terms as we may specify.

2. Furnishing of Items (Proposed § 414.422(c))

A contract supplier must agree to furnish the items included in its contract to all beneficiaries who maintain a permanent residence or who visit the competitive bidding area and request those items from the contract supplier. However, as explained in sections II.F.1 and II.F.2 above, a skilled nursing facility defined in section 1819(a) of the Act that is also a contract supplier must only agree to furnish the items included in its contract to patients to whom it would otherwise furnish Part B services. In addition, a physician that is also a contract supplier must only agree to furnish the items included in its contract to his or her patients.

3. Repairs and Replacements of Patient Owned Items Subject to Competitive Bidding. (Proposed § 414.422(c))

Repair or replacement of patient-owned DME, enteral nutrition equipment or off-the-shelf orthotics, that are subject to the competitive bidding program, must be furnished by a contract supplier because only winning suppliers can provide these items in a competitive bidding area. The contract supplier cannot refuse to repair or replace patient-owned items subject to competitive bidding. This proposed policy will help ensure that the beneficiaries will get the items from qualified suppliers, and it is consistent with the competitive bidding program in that it directs business to contract suppliers.

Therefore, we propose that repair or replacement of patient-owned items subject to a competitive bidding program must be furnished by a contract supplier. This requirement does not apply to beneficiaries who are outside of a competitive bidding area.

4. Furnishing Items to Beneficiaries Whose Permanent Residence Is Within a CBA

We propose that a contract supplier cannot refuse to furnish items and services to a beneficiary residing in a CBA based on the beneficiary's geographic location within the CBA. This policy will prohibit contract suppliers from refusing to furnish items to beneficiaries because they are not in close proximity to that supplier. In order to ensure beneficiary access to competitively bid items that are rented, we are proposing that the contract supplier must agree to accept as a customer a beneficiary who began renting the item from a different supplier regardless of how many months the item has already been rented. This is particularly important in those cases where a supplier or noncontract supplier does not elect to continue furnishing the item in accordance with the grandfathering provisions discussed in section II.C.3. above. Suppliers must factor the cost of furnishing items in these situations into their bid submissions. Also, in order to ensure beneficiary access to the competitively bid items in the inexpensive or routinely purchased DME payment category or to a competitively bid power wheelchair, the contract supplier must agree to give the beneficiary or his or her caregiver the choice of either renting or purchasing the item and must furnish the item on a rental or purchase basis as directed by the beneficiary or the beneficiary's caregiver. Suppliers must factor the cost of furnishing these items on both a rental and purchase basis into their bid submissions.

5. Furnishing Items to Beneficiaries Whose Permanent Residence Is Outside a CBA

In order to obtain medically necessary DMEPOS or other equipment, a beneficiary whose permanent residence is located outside of a CBA must use a contract supplier to obtain all items subject to competitive bidding in the competitive bidding area that he or she visits. We considered allowing beneficiaries whose residence is outside of a competitive bidding area to obtain these items from noncontract suppliers when coming into a competitive bidding area. However, consistent with section 1847(b)(6), we are proposing that they be required to use a contract supplier because we believe that new business for competitively bid items should be directed only to contract suppliers. Noncontract suppliers would be allowed to continue servicing current beneficiaries who maintain a permanent residence in a competitive bidding area if they qualified for the grandfathering program discussed in section II.C.3 above.

6. Information Collection From the Supplier

The following is a list of some of the terms, conditions and information that we propose a supplier must agree to provide to CMS for purposes of assessment prior to becoming a contract supplier:

- Information on product integrity.
- Information on business integrity.
- Organizational conflicts of interest.
- Name.
- Physical address.
- Billing address.
- Phone number.
- NSC number.
- Names of all owners.
- NSC number of any affiliated company.
- Address and phone number of any affiliated company.
- Employee information.
- Number of employees.
- Training and qualifications.
- Customer service protocol.
- Information on any bankruptcy proceedings involving the bidding company or any affiliated company.

We invite comments on what terms and conditions should be included in a contract for the competitive bidding program. We are interested both in terms and conditions that should be omitted as well as terms and conditions that should be added.

7. Change in Ownership (Proposed § 414.422(d))

We propose to evaluate a company's ownership information, its compliance with appropriate quality standards, its financial status, and its compliance status with government programs before we determine that a supplier can qualify as a contract supplier if there is a change of ownership. For this reason, we are proposing that suppliers would not be granted winning status by merely merging with or acquiring a contract supplier's business. We do not want to allow suppliers to adopt a strategy of circumventing the regular bidding process by gaining winning status through acquisitions of or mergers with

contract suppliers or to violate any anti-competition prohibitions. Therefore, contract suppliers must notify CMS in writing 60 days prior to any changes of ownership, mergers or acquisitions being finalized.

We have the discretion to allow a successor entity after a merger with or acquisition of a contract supplier to function as contract supplier when—

- There is a need for the successor entity as a contractor to ensure Medicare s capacity to meet expected beneficiary demand for a competitively bid item; and
- We determine that the successor entity meets all the requirements applicable to contract suppliers.
- The successor entity must agree to assume the contract supplier s contract, including all contract obligations and liabilities that may have occurred after the awarding of the contract to the previous supplier. The successor entity is legally liable for the non-fulfillment of obligations of the original contract supplier.

In addition, we would only allow the successor entity to function as a contract supplier if it executed a novation agreement.

8. Suspension or Termination of a Contract (Proposed § 414.422(f))

Contract suppliers are held to all the terms of their contracts for the full length of the contract period. Any deviation from contract requirements, including a failure to comply with governmental agency or licensing organization requirements, would constitute a breach of contract. If we conclude that the contract supplier has breached its contract, the actions we might take include, but are not limited to, asking the contract supplier to correct the breach condition, suspending the contract, terminating the contract for default (that may include reprocurement costs), precluding the supplier from participating in the competitive bidding program, or availing ourselves of other remedies permitted by law. We would also have the right to terminate the contract for convenience.

J. Administrative or Judicial Review (§ 414.424)

[If you choose to comment on issues in this section, please include the caption ''Administrative or Judicial Review'' at the beginning of your comments.]

Section 1847(b)(10) of the Act provides that there will be no administrative or judicial review under section 1869, section 1878, or any other section of the Act, for the:

- Establishment of payment amounts under a competitive bidding program;
- Awarding of contracts under a competitive bidding program;
- Designation of competitive bidding areas for the Medicare DMEPOS Competitive Bidding Program;
- Phased-in implementation of the Medicare DMEPOS Competitive Bidding Program;
- Selection of items for a competitive bidding program.
- Bidding structure and number of contract suppliers selected under a competitive bidding program.

This proposed regulation has no impact on the current beneficiary or supplier right to appeal denied claims. However, neither the beneficiary nor the supplier would be able to bring such an appeal if a competitively bid item was furnished in a competitive bidding area in a manner not authorized by this rule.

K. Opportunity for Participation by Small Suppliers

[If you choose to comment on issues in this section, please include the caption ''Opportunity for Participation by Small Suppliers'' at the beginning of your comments.]

In developing bidding and contract award procedures, section 1847(b)(6)(D) of the Act requires us to take appropriate steps to ensure that small suppliers of items have an opportunity to be considered for participation in the Medicare DMEPOS Competitive Bidding Program. Section 1847(b)(2)(A)(ii)) of the Act also states that the needs of small suppliers must be taken into account when evaluating whether an entity meets applicable financial standards.

Size definitions for small businesses are, for some purposes, developed by the Small Business Administration (SBA) based on annual receipts or employees, using the North American Industry Classification System (NAICS). Based on the advice from the SBA, we expect that most DME suppliers will fall into either NAICS Code 532291, Home Health Equipment Rental, or NAICS Code 446110, Pharmacies, since the SBA defines these small businesses as businesses having less than $6 million in annual receipts.

We propose using the SBA small business definition when evaluating whether a DMEPOS supplier is a small supplier. We are relying on the expertise of the SBA to determine what constitutes the appropriate definition of a small supplier. All contract suppliers are expected to service the whole competitive bidding area. However, we considered allowing a small supplier that has fewer than 10 full-time equivalent employees to designate a geographic service area that is smaller than the entire competitive bidding area. However, we are not proposing this approach because we want to ensure that beneficiaries have the choice of going to any contract supplier in their respective CBA. Carve out areas could lead to confusion for the beneficiary faced with multiple competitive bidding sub-areas. Further, we believe such an approach would allow selection of more favorable market areas by smaller businesses potentially leading to an unfair market advantage. We seek comments on this issue.

Information available to us on the size distribution of businesses that provide DMEPOS indicates that the majority of suppliers in the DMEPOS industry qualify as small businesses according to the SBA definitions. Our analysis of DMEPOS claims data suggests that at least 90 percent of DMEPOS suppliers had Medicare allowed charges of less than $1 million in 2003. The figure of $1 million could be an underestimate of total receipts, since it does not include non-Medicare receipts and non-DMEPOS receipts, but it does suggest that most DMEPOS suppliers are small.

Although section 1847(b)(6)(D) of the Act focuses on ensuring participation in the bidding, and not on bidding outcomes, we believe that it is worth noting how small suppliers fared in the bidding in the demonstration. Both small and large suppliers were selected as demonstration suppliers. Some small suppliers that were selected as demonstration suppliers were able to increase their market share substantially during the demonstration. Others experienced little change in market share.

We recognize the importance, benefits and convenience offered by the local presence of small suppliers. We propose to take the following steps to ensure that small suppliers have the opportunity to be considered for participation in the program.

First, as required by section 1847(b)(4)(B) of the Act, we will select multiple winners in each CBA. If a single winner was selected in an area, a small supplier would have difficulty participating in the competition because the supplier would have to somehow demonstrate that it could rapidly expand to serve the entire projected demand in the area. Selecting multiple suppliers should make it easier for small suppliers to participate in the program.

Second, we propose to conduct separate bidding competitions for product categories, allowing suppliers to decide how many product categories

for which they want to submit bids, rather than conduct a single bidding competition for all DMEPOS items and other equipment. We believe that separate competitions for product categories will encourage participation by small suppliers that specialize in one or a few product categories. If a single competition was held for all DMEPOS items and other equipment, small, specialized suppliers would have to either significantly expand their product and service offerings or submit bids for items they currently do not provide.

We recognize the importance of small suppliers in the DMEPOS industry, and we welcome comments on any the options identified above. We are also interested in other ways to ensure that small suppliers have opportunities to be considered for participation in the program.

To collect additional information on this issue, we contracted with RTI International to conduct focus groups with small suppliers. The purpose of the focus groups was to gather input on ways to facilitate participation by small suppliers in the program. The focus groups also discussed the impact of the requirement for the quality standards and accreditation, which will affect all small suppliers, regardless of whether they seek to participate in a competitive bidding program. We will review our efforts to ensure participation by small suppliers in the Medicare DMEPOS Competitive Bidding Program after we review comments to this proposed rule and the results of the focus groups. We will consider the findings of the focus groups along with additional options and comments presented on this proposed rule.

L. Opportunity for Networks (Proposed § 414.418)

[If you choose to comment on issues in this section, please include the caption ''Opportunity for Networks'' at the beginning of your comments.]

We propose allowing suppliers the option to form networks for bidding purposes. Networks are several companies joining together via some type of legal contractual relationship to submit bids for a product category under competitive bidding. This option will allow suppliers to band together to lower bidding costs, expand service options, or attain more favorable purchasing terms. We recognize that forming a network may be challenging for suppliers, and it also poses challenges for bid evaluation and program monitoring. Networking was included as an option in the demonstration project, but no networks submitted bids. Still, we believe that networking may be a useful option for suppliers in some cases, so we propose to offer it as an option. If suppliers do decide to form networks, we propose that the following rules must be met:

- A legal entity must be formed for the purpose of competitive bidding, such as a joint venture, limited partnership, or contractor/subcontractor relationship which would act as the applicant and submit the bid. We are specifically requesting comments regarding other types of suitable arrangements that would not require suppliers to form a new legal entity but would allow them to form a network for purposes of submitting bids. For example, one supplier could be designated as a primary contractor and the other suppliers in the group would function as subcontractors. In this example, if the contract with the primary contractor was terminated, the contracts with the subcontractors would also be terminated, thus nullifying the entire contract.
- All legal contracts must be in place and signed before the network entity can submit a bid for the Medicare DMEPOS Competitive Bidding Program.
- Each member of the network must be independently eligible to bid. If a member of the network is determined to be ineligible to bid, the network will be notified and given 10 business days to resubmit its application.
- Each member must meet any accreditation and quality standards that are required. Each member is equally responsible for the quality of care, service and items that it delivers to Medicare beneficiaries. If any member of the network falls out of compliance with this requirement, we would have the option of terminating the network contract.
- The network cannot be anti-competitive. We propose that the network members' market shares for competitive bid item(s) when added together, cannot exceed 20 percent of the Medicare market within a competitive bidding area. We believe that by setting the maximum size of the network's market shares at 20 percent of the marketplace, firms will be able to gain the potential efficiencies of networking while at the same time ensure that there would continue to be competition in the area. If the 20 percent rule were adopted and suppliers joined networks, there would still be at least 5 networks competing in a DMEPOS competitive bidding program, which we believe would allow for sufficient competition among suppliers. In particular, we are requesting comment about what percentage of the marketplace would be appropriate for networks for suppliers.
- A supplier may only join one network and cannot submit individual bids if part of a network. The network must identify itself as a network and identify all members in the network.
- The legal entity would be responsible for billing Medicare and receiving payment on behalf of the network suppliers. The legal entity would also be responsible for appropriately distributing reimbursements to the other network members.

M. Education and Outreach

[If you choose to comment on issues in this section, please include the caption ''Education and Outreach'' at the beginning of your comments.]

1. Supplier Education

We would also propose to undertake a proactive education campaign to provide all suppliers with information about the Medicare DMEPOS Competitive Bidding Program, bidding timelines, and bidding and program requirements. The goal of this campaign would be to make it as easy as possible for suppliers to submit bids.

To ensure that suppliers have timely access to accurate information on competitive bidding, we are proposing to instruct the CBIC and the DMERCs to provide early education and resources to all suppliers, referral agents, beneficiaries and other providers who service a competitive bidding area. Customer service support, ombudsmen networks, and the claims processing system would all be used to notify and educate all parties regarding competitive bidding. The CBIC(s) would be instructed to utilize data analysis in tailoring outreach to those that will be directly affected by competitive bidding.

After the release of bidding instructions, we would also propose to hold bidders conferences that would provide an open forum for suppliers and allow us to disseminate additional information. More information on the bidders conferences and other competitive bidding activities will be available on our Web site at *http://cms.hhs.gov/suppliers/dmepos/compbid/paoc.asp*.

We are also proposing that each DMERC include discussions and updates on competitive bidding as part of its existing outreach mechanisms. The fundamental goal of our supplier educational outreach is to ensure that those who supply DMEPOS products to Medicare beneficiaries receive information they need in a timely

manner so they have an understanding of the program and our expectations.

2. Beneficiary Education

The competitive bidding program will have an impact on the beneficiaries who receive DMEPOS items in a competitive bidding area. Competitive bidding represents a new way for Medicare beneficiaries to receive their DMEPOS products, so we believe that education is important to the success of the program.

We propose to educate beneficiaries utilizing numerous approaches. For example, our press office may consider creating press releases and fact sheets for each CBA. Notices would provide summaries of competitive bidding, background information, and objectives of the competitive bidding program. Publications may also be available on CMS Web sites, and from local contractors and the DMERCS.

We believe that it is important for beneficiaries to learn about the benefits of the Medicare DMEPOS Competitive Bidding Program, such as lower out-of-pocket expenses and increased quality of products, from suppliers that have completed the detailed selection process that CMS will require under the program. Enforcement of supplier standards and the threat of exclusion from the Medicare program will encourage suppliers to maintain a high level of service. These factors make an extensive outreach approach critical to the program's success.

Although we are not proposing at this time any additional education requirements, we are interested in seeking comments on other mechanisms that might be utilized to inform beneficiaries and suppliers about the competitive bidding program.

N. Monitoring and Complaint Services for the Competitive Bidding Program

[If you choose to comment on issues in this section, please include the caption ''Monitoring and Complaint Services for the Competitive Bidding Program'' at the beginning of your comments.]

Moving to a competitive bidding environment will not adversely affect CMS'' program integrity efforts in reviewing claims and rooting out fraud, waste, or abuse. Claims will still be reviewed for medical necessity, coordination of benefits status, and benefits integrity. Any suspected instances of DMEPOS competitive bidding market manipulation and collusion will be referred to the appropriate federal agencies that are responsible for addressing these issues.

We are proposing to establish a formal complaint monitoring system to address complaints in each competitive bidding area. Beneficiaries, referral agents, providers, and suppliers, including physicians, hospitals, nurses, and home health agencies, will be able to report problems or difficulties that they encounter regarding the ordering and furnishing of DMEPOS in a competitive bidding area. Some examples of problems that we would consider to be serious include: Contract suppliers refusing to furnish items to beneficiaries in the competitive bidding area for which they were awarded a contract; contract suppliers furnishing items of inferior quality than those that they bid to furnish; or contract suppliers violating assignment and billing requirements.

We also propose to monitor Medicare claims data to ensure that competitive bidding does not negatively impact beneficiary access to medically necessary items. Claims data will be monitored to identify trends, spikes or decreases in utilization and changes in utilization patterns within a product category.

O. Physician Authorization/Treating Practitioner and Consideration of Clinical Efficiency and Value of Items in Determining Categories for Bids (Proposed § 414.420)

[If you choose to comment on issues in this section, please include the caption ''Physician Authorization/Treating Practitioner'' at the beginning of your comments.]

Section 1847(a)(5)(A) of the Act provides authorization to the Secretary to establish a process for certain items under which a physician may prescribe a particular brand or mode of delivery of an item within a particular HCPCS code if the physician determines that use of the particular item would avoid an adverse medical outcome on the individual. We are proposing to implement this section in proposed § 414.440, and to also apply it to certain treating practitioners, including physician assistants, nurse practitioners, and clinical nurse specialists, since these practitioners also order DMEPOS for which Medicare makes payment. Since a HCPCS code may contain many brand products made by a wide range of manufacturers, we expect that suppliers will choose to only offer certain brands of products within a HCPCS code. This is a common practice used by suppliers to reduce the amount of inventory they maintain. However, we are proposing that the physician or treating practitioner would be able to determine that a particular item would avoid an adverse medical outcome, and that the physician or treating practitioner would have discretion to specify a particular product brand or mode of delivery.

When a physician or other treating practitioner requests a specific item, brand, or mode of delivery, contract suppliers would be required to furnish that item or mode of delivery, assist the beneficiary in finding another contract supplier in the CBA that can provide that item, or consult with the physician or treating practitioner to find a suitable alternative product or mode of delivery for the beneficiary. If, after consulting with the contract supplier, the physician or treating practitioner is willing to revise his or her order, that decision must be reflected in a revised written prescription. However, if the contract supplier decides to provide an item that does not match the written prescription from the physician or treating practitioner, the contract supplier should not bill Medicare as this would be considered a non-covered item.

For the Medicare DMEPOS Competitive Bidding Program, we would not require a contract supplier to provide every brand of products included in a HCPCS code. However, regardless of what brands the contract supplier furnishes, the single payment amount for the HCPCS code would apply. This issue will be studied in more detail by the Office of the Inspector General in 2009. At that time, we will evaluate the need for a specific process for certain brand names or modes of delivery.

In addition, section 1847(b)(7) of the Act provides authority to establish separate categories for items within HCPCS codes if the clinical efficiency and value of items within a given code warrants a separate category for bidding purposes. Currently, HCPCS codes are developed for items that are similar in function and purpose. For this reason, items within the same code are paid at the same rate. We believe that the HCPCS process has worked well in the past, and we believe that it adequately separates items based on their function. We welcome public comment on this issue.

P. Quality Standards and Accreditation for Suppliers of DMEPOS

[If you choose to comment on issues in this section, please include the caption ''Quality Standards and Accreditation for Supplies of DMEPOS'' at the beginning of your comments.]

Section 1847(b)(2)(A)(i) of the Act specifies that a contract may not be awarded to any entity unless the entity meets applicable quality standards specified by the Secretary under section

1834(a)(20) of the Act. Any supplier seeking to participate in the Medicare DMEPOS Competitive Bidding Program will need to satisfy the quality standards issued under section 1834(a)(20) of the Act. Additionally, section 1834(a)(20) of the Act gives us the authority to establish through program instructions or otherwise quality standards for all suppliers of DMEPOS and other items, including those who do not participate in competitive bidding, and to designate one or more independent accreditation organizations to implement the quality standards. Therefore, to ensure the integrity of suppliers' businesses, products, we are proposing to revise § 424.57 and add a new § 424.58.

1. Special Payment Rules for Items Furnished by DMEPOS Suppliers and Issuance of DMEPOS Supplier Billing Privileges (§ 424.57)

In accordance with sections 1834(a)(20) and 1834(j)(1)(B)(ii)(IV) of the Act, we propose to amend § 424.57 as discussed in this section of the proposed rule. In paragraph (a), Definitions, we would propose to define the following terms:

- *CMS-approved accreditation organization* is an independent accreditation organization selected by CMS to apply the supplier quality standards established by CMS;
- *Accredited DMEPOS* supplier means a supplier that has been accredited by an independent accreditation organization meeting the requirements of and approved by CMS in accordance with § 424.58; and
- *Independent accreditation organization* means an accreditation organization that accredits a supplier of DMEPOS and other items and services for a specific DMEPOS product category or a full line of DMEPOS product categories.

Proposed new paragraph (c)(22) would specify that all suppliers of DMEPOS and other items be accredited by a CMS approved accreditation organization before receiving a supplier billing number.

2. Accreditation (§ 424.58)

Under section 1834(a)(20) of the Act, we would add a new section § 424.58 to address the requirements for CMS approved accreditation organizations in the application of the quality standards to suppliers of DMEPOS and other items.

To promote consistency in accrediting providers and suppliers throughout the Medicare program, we would use existing procedures for the application, reapplication, selection, and oversight of accreditation organizations detailed at Part 488 and apply them to organizations accrediting suppliers of DMEPOS and other items. We would make modifications to the existing requirements for accreditation organizations to meet the specialized needs of the DMEPOS industry. These modifications may require an independent accreditation organization applying for approval or re-approval of deeming authority to—

- Identify the product-specific types of DMEPOS suppliers for which the organization is requesting approval or re-approval;
- Provide CMS with a detailed comparison of the organization's accreditation requirements and standards with the applicable Medicare quality standards (for example, a crosswalk);
- Provide a detailed description of the organization's survey processes including procedures for performing unannounced surveys, frequency of the surveys performed, copies of the organization's survey forms, guidelines and instructions to surveyors, quality review processes for deficiencies identified with accreditation requirements;
- Describe the decision-making processes; describe procedures used to notify suppliers of compliance or noncompliance with the accreditation requirements;
- Describe procedures used to monitor the correction of deficiencies found during the survey; and
- Describe procedures for coordinating surveys with another accrediting organization if the organization does not accredit all products the supplier provides.

We also propose to use the application procedure currently specified in § 488.4(c) through (i) as the application process for DMEPOS accreditation organizations.

We may request detailed information about the professional background of the individuals who perform surveys for the accreditation organization including: The size and composition of accreditation survey teams for each type of supplier accredited; the education and experience requirements surveyors must meet; the content and frequency of the continuing education training provided to survey personnel; the evaluation systems used to monitor the performance of individual surveyors and survey teams; and policies and procedures for a surveyor or institutional affiliate of an accrediting organization that participates in a survey or accreditation decision regarding a DMEPOS supplier with which this individual or institution is professionally or financially affiliated.

We may request a description of the organization's data management, analysis, and reporting system for its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system. We may require a description of the organization's procedures for responding to and investigating complaints against accredited facilities including policies and procedures regarding coordination of these activities with appropriate licensing bodies, ombudsmen programs, National Supplier Clearinghouse, and with CMS; a description of the organization's policies and procedures for notifying CMS of facilities that fail to meet the requirements of the accrediting organization; a description of all types, categories, and duration of accreditation decisions offered by the organization; a list of all currently accredited DMEPOS suppliers; a list of the types and categories of accreditation currently held by each supplier; a list of the expiration date of each supplier's current accreditation; and a list of the next survey cycles for all DMEPOS suppliers accreditation surveys scheduled to be performed by the organization.

We may require the accreditation organization to submit the following supporting documentation:

- A written presentation that would demonstrate the organization's ability to furnish CMS with electronic data in ASCII-comparable code;
- A resource analysis that would demonstrate that the organization's staffing, funding and other resources are sufficient to perform the required surveys and related activities; and
- An acknowledgement that the organization would permit its surveyors to serve as witnesses if CMS took an adverse action against the DMEPOS supplier based on the accreditation organization's findings.

We propose to survey accredited suppliers from time to time to validate the survey process of a DMEPOS accreditation organization (validation survey). These surveys would be conducted on a representative sample basis, or in response to allegations of supplier noncompliance with quality standards. When conducted on a representative sample basis, the survey would be comprehensive and address all Medicare supplier quality standards or would focus on a specific standard. When conducted in response to an allegation, the CMS survey team would survey for any standard that CMS determined was related to the

allegations. If the CMS survey team substantiated a deficiency and determined that the supplier was out of compliance with Medicare supplier quality standards, we would revoke the supplier's billing number and re-evaluate the accreditation organization's approved status. A supplier selected for a validation survey would be required to authorize the validation survey to occur and authorize the CMS survey team to monitor the correction of any deficiencies found through the validation survey. If a supplier selected for a validation survey failed to comply with the requirements at § 424.58, it would no longer meet the Medicare supplier quality standards and its supplier billing number would be revoked.

3. Ongoing Responsibilities of CMS Approved Accreditation Organizations

A DMEPOS independent accreditation organization approved by CMS would be required to undertake the following activities on an ongoing basis:

• Provide to CMS in written form and on a monthly basis all of the following:

++ Copies of all accreditation surveys along with any survey-related information that CMS may require (including corrective action plans and summaries of CMS requirements that were not met).

++ Notice of all accreditation decisions.

++ Notice of all complaints related to suppliers of DMEPOS and other items.

++ Information about any suppliers of DMEPOS and other items for which the accrediting organization has denied the supplier's accreditation status.

++ Notice of any proposed changes in its accreditation standards or requirements or survey process. If the organization implemented the changes before or without CMS approval, CMS could withdraw its approval of the accreditation organization.

• Submit to CMS (within 30 days of a change in CMS requirements):

++ An acknowledgment of CMS's notification of the change;

++ A revised cross-walk reflecting the new requirements; and

++ An explanation of how the accreditation organization would alter its standards to conform to CMS' new requirements, within the time frames specified by CMS in the notification of change it received.

• Permit its surveyors to serve as witnesses if CMS takes an adverse action based on accreditation findings.

• Provide CMS with written notice of any deficiencies and adverse actions implemented by the independent accreditation organization against an accredited DMEPOS supplier within 2 days of identifying such deficiencies, if such deficiencies pose immediate jeopardy to a beneficiary or to the general public.

• Provide written notice of the withdrawal to all accredited suppliers within 10 days of CMS's notice to withdraw approval of the accreditation organization.

• Provide, on an annual basis, summary data specified by CMS that related to the past year's accreditation activities and trends.

4. Continuing Federal Oversight of Approved Accreditation Organizations

This paragraph would establish specific criteria and procedures for continuing oversight and for withdrawing approval of an accreditation organization.

a. Equivalency Review

We would compare the accreditation organization's standards and its application and enforcement of those standards to the comparable CMS requirements and processes when: CMS imposed new requirements or changed its survey process; an accreditation organization proposed to adopt new standards or changes in its survey process; or the term of an accreditation organization's approval expired.

b. Validation Review

A CMS survey team would conduct a survey of an accredited organization, examine the results of the accreditation organization's own survey procedure onsite, or observe the accreditation organization's survey, in order to validate the organization's accreditation process. At the conclusion of the review, we would identify any accreditation programs for which validation survey results indicated:

• A 10 percent rate of disparity between findings by the accreditation organization and findings by CMS on standards that did not constitute immediate jeopardy to patient health and safety if not met;

• Any disparity between findings by the accreditation organization and findings by CMS on standards that constituted immediate jeopardy to patient health and safety if not met; or

• There were widespread or systemic problems in the organization's accreditation process such that the accreditation no longer provided assurance that suppliers met or exceeded the Medicare requirements, irrespective of the rate of disparity.

c. Notice of Intent To Withdraw Approval for Deeming Authority

If an equivalency review, validation review, onsite observation, or our concerns with the ethical conduct of the accreditation organization suggest that the accreditation organization is not meeting the requirements of proposed § 424.58, we would provide the organization written notice of its intent to withdraw approval of the accreditation organization's deeming authority.

d. Withdrawal of Approval for Deeming Authority

We could withdraw approval of an accreditation organization at any time if we determine that: Accreditation by the organization no longer guaranteed that the suppliers of DMEPOS and other items met the supplier quality standards and the failure to meet those requirements could pose an immediate jeopardy to the health or safety of Medicare beneficiaries or constitute a significant hazard to the public health; or the accreditation organization failed to meet its obligations for application and reapplication procedures.

e. Reconsideration

An accreditation organization dissatisfied with a determination that its accreditation requirements did not provide or do not continue to provide reasonable assurance that the entities accredited by the accreditation organization met the applicable supplier quality standards would be entitled to a reconsideration. We would reconsider any determination to deny, remove, or not renew the approval of deeming authority to accreditation organizations if the accreditation organization filed a written request for a reconsideration through its authorized officials or through its legal representative.

The request would have to be filed within 30 days of the receipt of CMS notice of an adverse determination or nonrenewal. The request for reconsideration would be required to specify the findings or issues with which the accreditation organization disagreed and the reasons for the disagreement. A requestor could withdraw its request for reconsideration at any time before the issuance of a reconsideration determination. In response to a request for reconsideration, we would provide the accrediting organization the opportunity for an informal hearing that would be conducted by a hearing officer appointed by the Administrator of CMS and provide the accrediting organization the opportunity to present, in writing

and in person, evidence or documentation to refute the determination to deny approval, or to withdraw or not renew deeming authority.

We would provide written notice of the time and place of the informal hearing at least 10 days before the scheduled date. The informal reconsideration hearing would be open to CMS and the organization requesting the reconsideration, including authorized representatives, technical advisors (individuals with knowledge of the facts of the case or presenting interpretation of the facts), and legal counsel. The hearing would be conducted by the hearing officer who would receive testimony and documents related to the proposed action. Testimony and other evidence could be accepted by the hearing officer. However, it would be inadmissible under the usual rules of court procedures. The hearing officer would not have the authority to compel by subpoena the production of witnesses, papers, or other evidence. Within 45 days of the close of the hearing, the hearing officer would present the findings and recommendations to the accrediting organization that requested the reconsideration. The written report of the hearing officer would include separate numbered findings of fact and the legal conclusions of the hearing officer. The hearing officer's decision would be final.

Q. Low Vision Aid Exclusion (Proposed § 414.15)

[If you choose to comment on issues in this section, please include the caption ''Low vision aid exclusion'' at the beginning of your comments.]

We are proposing to clarify that the scope of the eyeglass coverage exclusion encompasses all devices irrespective of their size, form, or technological features that use one or more lens to aid vision or provide magnification of images for impaired vision. This proposed regulatory provision clarifies that the statute does not support the interpretation that the term eyeglasses only applies to lenses supported by frames that pass around the nose and ears. The underlying technology and the function of eyeglasses are to use lenses to assist persons with impaired vision. *Dorland's Illustrated Medical Dictionary* (28th Ed. 1994) defines ''eyeglass'' simply as a ''lens for aiding sight.'' We interpret the eyeglass exclusion at section 1862(a)(7) of the Act as encompassing all of the various types of devices that use lenses for the correction of vision unless there is a statutory provision that provides for coverage. For example, section 1861(s)(8) of the Act provides for intraocular lenses, conventional eyeglasses and contact lenses after each cataract surgery with insertion of an intraocular lens. We specifically invite public comment on this issue.

We note that if the term ''eyeglasses'' as used at section 1862(a)(7) of the Act only refers to the exclusion of payment for lenses supported by frames that pass around the nose and ears, then the eyeglass exclusion would not apply to contact lenses and there would have been no reason for the Congress to make an exception to section 1862(a)(7) of the Act for contact lenses. However, the Congress did make such an exception to section 1862(a)(7) of the Act for conventional contact lenses after cataract surgery.

A comparison of sections 1862(a) and 1861(s) of the Act indicate that the eyeglass exclusion also applies to contact lenses except for one pair after cataract surgery. By applying the eyeglass exclusion to contact lenses, the statute reinforces the interpretation that the use of lenses to aid impaired vision is the scope of what is excluded by the eyeglass exclusion and not just lenses supported by frames that pass around the nose and ears. Also, when referring to ''conventional eyeglasses,'' section 1861(s)(8) of the Act is affirming that the term ''eyeglasses'' has a wider application than ''conventional eyeglasses'' and the terms ''conventional eyeglasses'' and ''eyeglasses'' are not synonymous in the statute.

This interpretation of the term eyeglasses is consistent with the regulatory language used for the optional benefit in the Medicaid program under § 440.120(d) for eyeglasses, which is ''lenses, including frames, and other aids to vision * * *'' This language gives States that cover eyeglasses the flexibility to adopt a reasonable definition that includes low vision aids that are determined medically necessary. The definition used by the Medicaid program demonstrates that the term eyeglasses can appropriately be defined to include low vision aids. Consistent with this framework, we consider the eyeglass exclusion for the Medicare program to apply to eyepieces, hand-held magnifying glasses, contact lenses and other instruments, such as closed-circuit televisions and video magnifiers that use lenses to aid vision.

Although the technology of using lenses to aid low vision may be improved with new innovations, such as contact lenses, progressive lenses and low vision aids, this does not exempt the new technology from the eyeglass exclusion. The adaptation of the vision aid technology does not change the essential nature of the device: A video magnifier is still a device that utilizes a lens to enhance vision. We believe this interpretation is consistent with the decision in *Warder* v. *Shalala*, 149 F 3d73 (1st Cir. 1998), in which the United States Court of Appeals for the First Circuit held, in part, that the Secretary's classification of a technologically advanced seating system as DME, and not as an orthotic, was supported by the Medicare statute and regulations. In reaching this conclusion, the court stated that the Secretary could conclude that the seating system met the definition of DME, which ''unequivocally includes 'wheelchairs','' since the system served the same (as well as additional) functions as a wheelchair. We believe this case affirms the principle that the Secretary has the discretion to interpret the statute and to assign a product to a particular Medicare category even when this will result in non-coverage determinations by Medicare.

R. Establishing Payment Amounts for New DMEPOS Items (Gap-Filling) (Proposed § 414.210(g))

[If you choose to comment on issues in this section, please include the caption ''Gap-filling'' at the beginning of your comments.]

There is no process set forth in the statute or regulations for calculating fee schedule amounts for new DMEPOS items (that is, new HCPCS codes representing categories of items for which there is no historic Medicare pricing information). Since 1989, CMS and its contractors have used a process referred to as ''gap filling'' to establish fee schedule amounts for items for which fee schedule base data is not available. In the past, the gap-filling process was described in the Medicare Carriers Manual. The process is now contained in the Medicare Claims Processing Manual and provides that fee schedule amounts are to be gap-filled using fee schedule amounts already established for comparable items; properly calculated fee schedule amounts from a neighboring carrier; or supplier price lists with prices in effect during the database year.

If the only available price information is from a period other than the fee schedule base period (for example, 1992 for surgical dressings), a deflation factor is applied to the price in order to approximate the base year price for gap-filling purposes. The deflation factors are based on the percentage change in

the CPI–U from the mid-point of the fee schedule base period (for example, June 1992 for surgical dressings) to the mid-point (that is, June) of the calendar year that the gap-filling source price is in effect. When gap-filling base fees for capped rental items, it is necessary to first gap-fill the purchase fee and then compute the rental fee based on 10 percent of the gap-filled purchase fee. For used equipment, base fees are gap-filled using 75 percent of the gap-filled fee for new equipment.

The process of gap-filling essentially estimates what the average reasonable charges would be for an item if it was paid for under Medicare during the fee schedule base period. The gap-filled base fees are updated by the covered item updates and are subject to regional fees, and ceiling and floor limitations, if applicable. We have consistently used the gap-filling process as the method for replicating historical charge data. However, this method can lead to very high or very low fee schedule amounts without validation that these amounts are realistic and equitable relative to the cost of furnishing the item. Since the gap-filling process began in 1989, most base fees have been gap-filled using either supplier price lists or manufacturers' suggested retail prices. Many manufacturers are aware of the process and realize that if a unique HCPCS code is added for their device, they can establish inflated suggested retail prices that would be used to establish the Medicare fee schedule payment amounts. We also view the continued use of deflation factors to replicate historic prices or charges to be an imperfect method of establishing base fee schedule amounts. Under the Medicare DMEPOS benefits, there is an inherent responsibility to pay enough for beneficial new technologies to ensure beneficiary access to care, while also being a prudent payer. To increase the Medicare program's ability to ensure fair treatment across technologies, we have focused on developing strategies that recognize those technologies that provide a demonstrated clinical benefit and clearly identify the additional benefits over existing technologies. This initiative has been endorsed by the Council on Technology and Innovation (CTI), which was established under section 942 of the MMA to coordinate the activities of coverage, coding, and payment processes affecting new technologies and procedures and to coordinate the exchange of information on new technologies between CMS and other entities that make similar decisions.

We procured two contractors to conduct a pilot study on the benefits, effectiveness, and costs of several products. These projects were very successful in compiling the technical information that is necessary to evaluate technologies for the purpose of making payment and HCPCS coding decisions for new items. The products studied were assessed in terms of three main areas as follows:

- Functional Assessment—This step involved evaluating the device's operations, safety, and user documentation relative to the Medicare population. Interviews were conducted with health care providers to determine how and under what circumstances they would prescribe the product for a Medicare beneficiary.
- Price Comparison Analysis—A comparative cost analysis determined how the cost of this product compared to similar products on the market or alternative treatment modalities.
- Medical Benefit Assessment—This step focused on the effectiveness of the product in doing what it claims to do. Scientific literature reviews and interviews with health care providers were conducted to determine if the product significantly improved clinical outcomes compared to other products and treatment modalities.

Competitive bidding will allow market forces to determine the price Medicare pays for certain DMEPOS items. In order to ensure that only quality products are provided to our beneficiaries, we are proposing to use the three types of assessments described above to assist us in ensuring that the HCPCS codes for DMEPOS items reflect current technology and functional differences in items and that new products are included within the appropriate HCPCS code. The functional technology assessment will allow us to compare older, similar products already on the market and newer more expensive products. The functional assessment and medical benefit assessment of devices will greatly aid our decision-making process regarding the need to create unique HCPCS code categories. The price comparison analysis of devices will help us determine if manufacturers' suggested retail prices are overly inflated, will provide a basis for establishing adequate payment amounts for new items, and will assist in establishing payment amounts for new items that are introduced after a bidding cycle has begun.

Sections 1834(a), (h), (i) and 1833(o) of the Act require the establishment of fee schedule amounts to pay for DME, prosthetic devices, orthotics, prosthetics, surgical dressings, and therapeutic shoes. In addition, payment for PEN is also based on fee schedule amounts authorized by section 1842(s) of the Act. The fee schedule amounts are based on average payments made under the previous reasonable charge payment methodology as mandated by the statute. When a new HCPCS code is created for a category of items, the gap-filling process outlined in this section is used to establish the fee schedule amounts for the new code. We are proposing that this gap-filling process be revised as follows:

- We would continue to make every effort to utilize existing fee schedule amounts or historic Medicare payment amounts, if applicable, in establishing payment amounts for new HCPCS codes. In addition, the method of using payment amounts for comparable items would be retained under the revised process for establishing payment amounts for new HCPCS codes.
- We would discontinue the practice of deflating supplier prices and manufacturers suggested retail prices to the fee schedule base period. When fee schedule amounts are established based on pricing information, prices in effect at the time that the fee schedule amounts are established would be used. For subsequent years, the fee schedule amounts established using supplier or manufacturer pricing information would be updated as required by the statute as it is applicable to each category of items. In the past, when retail pricing information is not available, wholesale prices plus an appropriate mark-up are used to establish the fee schedule amounts.
- We would use the functional technology assessment process, in part or in whole, as another method for establishing payment amounts for new items. Based on the results of the technology assessment, the fee schedule amounts would be established using fee schedule amounts for items determined to be comparable to the new item or an amount determined to be appropriate for the new item based on the cost comparison analysis. We can use the technology assessment process at any time to adjust prices on or after January 1, 2007 that were previously established using the gap-filling methodology if it is determined that those pricing methods resulted in payment amounts that do not reflect the cost of furnishing the item. Fee schedule amounts established using this process would be updated as required by the statute as it is applicable to each category of items.

In those cases where the addition of the HCPCS code for a new item occurs in the middle of a bidding cycle and a Medicare pricing history or profile does not exist for the item or is not applicable

for the new code category, we propose that the revised gap-filling process for establishing fee schedule payment amounts for new DMEPOS items would also be used in establishing payment amounts for new items until they are added to a product category subject to competitive bidding. Any qualified Medicare supplier will be allowed to supply one of these items until the next bidding cycle. The next bidding cycle will set a new single payment amounts for this item.

We propose that other revisions to HCPCS codes for items under a competitive bidding program that occur in the middle of a bidding cycle will be handled as follows:

- If a single HCPCS code for an item is divided into multiple codes for the components of that item, the sum of payments for these new codes will not be higher than the payment for the original item. Suppliers selected through competitive bidding to provide the item will also provide the components of the item. During the subsequent competitive bidding cycle, suppliers will bid on each new code for the components of the item, and we will determine new single payment amounts for these components.
- If a single HCPCS code for two or more similar items is divided into two or more separate codes, the payment amount applied to these codes will continue to be the same payment amount applied to the single code until the next competitive bidding cycle. During the next cycle, suppliers will bid on the new separate and distinct codes.
- If the HCPCS codes for several components of one item are merged into one new code for the single item, the payment amount of the new code will be equal to the total of the separate payment amounts for the components. Suppliers that were selected through competitive bidding to supply the various components of the item will continue to supply the item using the new code. During the subsequent bidding cycle, suppliers will bid on the new code for the single item to determine a new single payment amount for this new code.
- If multiple codes for different, but related or similar items are placed into a single code, the payment amount for the new single code will be the average (arithmetic mean) weighted by frequency of payments for the formerly separate codes. Suppliers providing the items originally will also provide the item under the new single code. During the subsequent bidding cycle, suppliers will bid on the new single code and determine a new single payment amounts for this code.

S. Fee Schedules for Home Dialysis Supplies and Equipment (Proposed § 414.107)

[If you choose to comment on issues in this section, please include the caption ''Fee Schedules for Home Dialysis Supplies and Equipment'' at the beginning of your comments.]

Section 1842(s) of the Act provides authority for implementing statewide or other area wide fee schedules to be used for payment of home dialysis supplies and equipment. Section 1842(s)(1) of the Act provides that the fee schedules are to be updated on an annual basis by the percentage increase in the CPI–U (United States city average) for the 12-month period ending with June of the preceding year. Section 4315(d) of the BBA requires that the fee schedules that are established using this authority are set initially so that total payments under the fee schedules are approximately equal to the estimated total payments that would be made under the reasonable charge payment methodology.

On July 27, 1999, we published a proposed rule, Replacement of Reasonable Charge Methodology by Fee Schedules (64 FR 40534), to establish fee schedules for these items. Fee schedules were established for PEN items and services in 2002 following the publication of the final rule, Replacement of Reasonable Charge Methodology by Fee Schedules for Parenteral and Enteral Nutrients, Equipment, and Supplies, on August 28, 2001 (66 FR 45173). However, fee schedule amounts were not established for home dialysis supplies and equipment because the data needed to establish budget neutral fee schedule amounts was not available at the time that final rule was published. We are now proposing to establish fee schedule amounts for home dialysis supplies and equipment because the data needed to establish budget neutral fee schedule amounts are now available.

Sections 1832(a)(1) and 1861(s)(2)(F) of the Act establish that home dialysis supplies and equipment are a covered benefit under Part B of the Medicare program. Home dialysis supplies and equipment are defined under section 1881(b)(8) of the Act as ''medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.'' We implemented these provisions in title 42, part 414 subpart E of the regulations.

Total monthly payments to a supplier for home dialysis supplies and equipment may not exceed the limit for equipment and supplies established in § 414.330(c)(2). We have determined that total monthly payments for these items per supplier were equal to the monthly limit 79 percent of the time for items furnished from January 1, 2004 through November 30, 2004. This means that suppliers billed up to or in excess of the monthly payment limit in 79 percent of the claims submitted during this 11-month period. We are proposing that nationwide fee schedule amounts be implemented for these items effective January 1, 2007. These amounts would be based on the average allowed charges calculated using data for allowed services furnished from January 1, 2005 through December 31, 2005, increased by the percentage change in the CPI–U for the 24-month period ending June of 2006. We expect that the total payments made under the fee schedule will be approximately equal to the total payments that would be made under the reasonable charge payment methodology because the overall payment limit for equipment and supplies established in § 414.330(c)(2) is not affected by implementation of the fee schedules for these items. By using the average, we do not anticipate a significant impact on utilization of home dialysis, supplies and equipment.

Beginning with 2008, the fee schedule amounts for home dialysis supplies and equipment will be updated on an annual basis by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding year under section 1842(s)(1) of the Act.

T. Fee Schedules for Therapeutic Shoes (Proposed § 414.228(c))

[If you choose to comment on issues in this section, please include the caption ''Fee Schedules for Therapeutic Shoes'' at the beginning of your comments.]

We are proposing to add § 414.228(c) to part 414, subpart D of the regulations to specify that the Medicare fee schedule amounts for therapeutic shoes, inserts, and shoe modifications are established in accordance with the methodology specified in sections 1833(o) and 1834(h) of the Act.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate

whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements.

Section 414.412 Submission of Bids Under the Competitive Bidding Program

Section 414.412 establishes the requirements for the submission of bids under the competitive bidding process. The burden associated with these requirements is the time and effort necessary to prepare and submit a bid. The burden is estimated to be 70 hours per bid. In the competitive bidding demonstration, suppliers estimated that they spent between 40 and 100 hours to complete the bids. We therefore use the median of 70 hours per bid. In connection with the competitive bidding programs that we are proposing to begin implementing in 2006, we assume that 90 percent of suppliers of potentially eligible products in the designated competitive bidding areas will submit bids resulting in 16,545 bids. Therefore, we estimate it would take 1,158,150 total annual hours to complete the bids in 2006. In later years, as additional CBAs are added, the number of bids will increase as will the estimated total annual number of hours to complete the bids. By 2008, if 90 percent of suppliers of eligible products in the bidding CBAs submit bids there will be 72,865 bids. We estimate that the annual hours to complete the bids will rise to 5,100,550 total annual hours in connection with the competitive bidding round that we expect to occur in 2008, which will involve 70 of the largest MSAs. However, the number of hours necessary to complete the bids may fall over time as suppliers become more familiar with the forms and the competitive bidding process. The number of hours may also be lower if additional suppliers do not submit bids. As a result, it is possible that the above figures overestimate the number of hours required to fill out the bidding forms.

The cost associated with the requirements pertaining to the accreditation program are not included as part of the cost or burden for the competitive bidding program.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: William Parham, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, *carolyn_lovett@omb.eop.gov.* Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption ''Regulatory Impact Analysis'' at the beginning of your comments.]

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (that is, a final rule that would have an annual effect on the economy of $100 million or more in any 1 year, or would adversely affect in a material way the economy, a sector or the economy, productivity, competition, jobs, the environment, public health or safety, or communities).

Since this rule is considered to be a major rule because it is economically significant, we have prepared a regulatory impact analysis. We expect that this rule will have a significant impact on a substantial number of small suppliers. The RFA requires that we analyze regulatory options for small businesses and other entities. The analysis must include a justification concerning the reason action is being taken, the kinds and numbers of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives with less significant adverse economic impact on the small entities.

B. Anticipated Affects

We can anticipate the probable effects of the regulation, but the actual effects will vary depending on which competitive bidding areas and product categories are ultimately selected for competitive bidding. The analysis which follows, taken together with the rest of this preamble, constitutes both a regulatory impact analysis (RIA) and an initial regulation flexibility analysis (IRFA).

Therefore, for the purpose of this impact analysis, because of the uncertainty concerning the actual number of suppliers who will participate, the bid amounts and the specific items and areas for which competitive bidding will be conducted, it is necessary to make several assumptions.

First, we assume that the first round of bidding will occur in 2006 with prices taking effect in October, 2007, and the second round of bidding will occur in 2008 with prices taking effect in January, 2009. We also assume rebidding will only occur every three years.

Second, we assume that competitive bidding will occur in 10 of the largest MSAs in 2006, excluding New York, Chicago, and Los Angeles. We exclude the three largest MSAs in 2006 because we are proposing not to include them in the initial phase implementation. We are excluding the three largest MSAs because they are significantly larger than any of the areas in which we implemented the competitive bidding demonstrations and we would like to gain more experience in smaller markets before we enter into the largest markets.

Competitive bidding will take place in 70 of the largest MSAs in 2008 and an additional 10 competitive bidding areas (CBAs) will be added in both 2009 and 2010 for a total of 100 CBAs. For the initial competition, we assume that bidding will take place in fall 2006, bids will be evaluated in 2007, and prices will go into effect in October 2007. We also assume that the same timeframes will apply when bidding takes place in the initial 10 MSAs in fall 2009. In all other cases, we assume that competitive bidding will take place in the fall and prices will go into effect on January 1 of the following year in the relevant CBAs.

Third, we make some assumptions about which product categories would be selected for competitive bidding. We recognize that potential savings, implementation costs, the number of affected suppliers, and supplier bid costs all depend on which product groups are ultimately selected. The product categories have yet to be decided. We estimate that approximately 10 product categories will be selected for competitive bidding for 2006 and as many as 7 or 8 of the selected product categories will be among the 10 largest in terms of allowed charges. The remaining 2 or 3 product categories will come from the top 20 product groups ranked by allowed charges. Table 10 shows the top 20 eligible DMEPOS policy groups and their 2003 allowed charges.

TABLE 10.—2003 ALLOWED CHARGES: TOP 20 ELIGIBLE DME POLICY GROUPS

Rank	Policy group	2003	Percent of eligible DMEPOS charges
1	Oxygen Supplies/Equipment	$2,433,713,269	29
2	Wheelchairs/POVs	1,926,210,675	23
3	Diabetic Supplies & Equipment	1,110,934,736	13
4	Enteral Nutrition	676,122,703	8
5	Hospital Beds/Accessories	373,973,207	4
6	CPAP	204,774,837	2
7	Support Surfaces	193,659,248	2
8	Infusion Pumps & Related Drugs	149,208,088	2
9	Respiratory Assist Device	133,645,918	2
10	Lower Limb Orthoses*	122,813,555	1
11	Nebulizers	98,951,212	1
12	Walkers	96,654,035	1
13	Negative Pressure Wound Therapy	88,530,828	1
14	Commodes/Bed Pans/Urinals	51,372,352	1
15	Ventilators	42,890,761	0
16	Spinal Orthoses*	40,731,646	0
17	Upper Limb Orthoses*	29,069,027	0
18	Patient Lift	26,551,310	0
19	Seat Lift Mechanism	15,318,552	0
20	TENS	15,258,579	0
	Total for 20 Groups	7,830,384,538	92

*Excludes Custom Fabricated Items; but does not exclude all items that might require more than minimal self-adjustment or expertise in trimming, bending, molding, assembling, or customizing to fit the individual.

However, we reiterate that our selection for the impact analysis should in no way be interpreted as signifying which product categories will be selected for the actual competitive bidding program. Our product category selection for this impact analysis is only to assist us in estimating the potential savings, costs of implementation, and supplier impact.

Fourth, we assume that the Medicare DMEPOS fee schedule will increase at the rate of inflation for those years in which a statutory freeze has not been put in place by the MMA, and that total charges will increase at the same rate as Part A and Part B Medicare expenditures. We exclude Part D expenditure growth because this data is not currently available. We base our estimates on the expected growth in Part A and Part B expenditures from the Trustees Reports. (Tables IV.F.2 and IV.F.3 of the 2004 Medicare Trustees Report).

This proposed rule is expected to affect Medicare and its beneficiaries, certain CMS contractors including the four current DMERCs, the SADMERC, the NSC, one or more proposed CBICs, and DMEPOS suppliers. Although the work-load of referral agents, including hospital discharge planners and some healthcare providers, appeared to increase during implementation of the demonstration, we do not anticipate that competitive bidding will result in an appreciable, ongoing burden on referral agents. In addition, rural healthcare facilities should not be significantly impacted as the program is expected to operate primarily within relatively large MSAs.

The DMEPOS supplier industry is expected to be significantly impacted by this rule when finalized. However, not all suppliers will be affected directly by the competitive bidding program. Only suppliers who furnish products in at least one product category eligible for competitive bidding and in areas selected for competitive bidding could potentially be affected. A customized orthotics supplier in Manhattan that does not supply off-the-shelf orthotics will not be affected. We estimate that approximately 30,000 suppliers offer at least one product eligible for competitive bidding and are located in one of the largest 100 MSAs and could therefore be impacted by the program. Some of these suppliers will be affected in multiple CBAs if they offer products in more than one CBA.

Based on our analysis of 2003 claims data, we also estimate that approximately 90 percent of registered DMEPOS suppliers are considered small according to the SBA definition. According to the SBA, ''A small business is a concern that is organized for profit, with a place of business in the United States, and which operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. Further, the concern cannot be dominant in its field, on a national basis. Finally, the concern must meet the numerical small business size

standard for its industry. SBA has established a size standard for most industries in the U.S. economy.'' The size standard for NAICS code, 532291, Home Health Equipment Rental is $6 million. (*see http://www.sba.gov/size/sizetable2002.html,* read May 9, 2005.)

Many of these suppliers provide minimal amounts of DMEPOS, and thus the remaining larger suppliers control significant market share. We anticipate that the bidding process will be designed to neither reward nor penalize small suppliers, however the fixed costs required to undergo the bidding process may be a larger deterrent to small businesses than larger firms. We do not expect that the regulation will result in direct costs that exceed $120 million per year, and thus the Unfunded Mandates Reform Act (UMRA) would not apply. Since suppliers can choose whether to submit a bid for the competitive bid program, the regulation imposes no direct costs and therefore does not reach the $120 million direct cost threshold under UMRA. While not included in this regulation, it is expected that the separate MMA requirement for accreditation will result in added supplier costs beyond those included in this regulation.

The proposed rule will also impact CMS and its contractors. There are four DMERCs currently contracted by CMS to process claims for the DMEPOS benefit. The Statistical Analysis DME Regional Carrier, (SADMERC), the existing contractor assigned to perform statistical support and the National Supplier Clearinghouse, (NSC), which maintains a registry of approved suppliers, will need to adapt to the competitive bidding environment. Finally, we will need to devote resources necessary for overseeing program operations.

C. Implementation Costs

We will incur administrative costs in connection with the implementation and operation of competitive bidding, which can affect the net savings that can be expected under the proposed rule. However, many of the variable costs associated with bid solicitation and evaluation will ultimately depend on how many suppliers choose to participate in competitive bidding. Because of this uncertainty, we do not estimate bid solicitation and evaluation costs at this time.

We will incur initial start up costs. We estimate the costs to CMS and its contractors will include approximately $1 million in immediate fixed costs for contractor startup and system changes for the initial competitive bidding phase in 2006. In addition to the initial start up costs, we will also incur maintenance costs and bid solicitation and evaluation costs. We will need to pay maintenance costs every year for the running of the program; however, we will only need to pay bid costs in the years in which competitive bidding is conducted. Yearly maintenance costs will depend on the number of CBAs where the program has been implemented, while bid solicitation and evaluation costs will depend on the number of sites which have bidding that year.

Our maintenance costs will include a small staff to oversee the program, office costs for the staff, as well as staff travel costs, and overhead. In addition, we propose that the CBIC(s) will be responsible for much of the program maintenance. The maintenance costs could also include the costs for an Ombudsman(s) per DMERC region to assist suppliers, beneficiaries, and referral agents with the competitive bidding process and questions. We also expect to incur costs for education and outreach expenses such as staff resources and material costs for producing education materials and supplier directories.

We will incur bid costs in the years in which we conduct competitive bidding and when we evaluate bids. These costs will be a direct result of the bid solicitation and evaluation process. Bid solicitation costs include costs associated with mailing necessary information to beneficiaries, printing, and duplicating. The actual costs will vary by CBA and will depend on the number of potential suppliers. We will incur bid evaluation costs whenever bidding occurs in a CBA. We are proposing that the bid evaluation will be done by the CBIC(s). According to the DMEPOS evaluation report, it took about 9.4 hours to evaluate each bid during the demonstration. However, since the Medicare DMEPOS Competitive Bidding Program entails Quality Standards/Accreditation as a separate process, we expect that the time required to evaluate bids will be lower than in the demonstration. The total bid evaluation costs will ultimately depend on the number of suppliers that choose to submit bids.

D. Program Savings

We estimate large savings from the competitive bidding program. Our estimates of gross savings utilize as a starting point the savings results in the demonstration. Excluding surgical dressings that are not eligible for competitive bidding, the average product group savings rate in the demonstration ranged from 9 to 30 percent in a CBA round with most product groups around a 20 percent savings. Table 11 shows the savings rate for selected product groups and CBAs by round during the DMEPOS demonstration.

TABLE 11.—DMEPOS COMPETITIVE BIDDING DEMONSTRATION SAVINGS RATES

Product group	Polk County round 1	Polk County round 2	San Antonio
Oxygen Equipment and Supplies	$2,364,811 (17%)	$1,525,490 (20%)	$2,096,707 (19%)
Hospital Beds and Accessories	$290,715 (23%)	$195,140 (31%)	$644,514 (19%)
Urological Supplies	$36,169 (18%)	$12,585 (9%)	(1)
Surgical Dressings	−$30,321 (−12%)	−$637 (−1%)	(1)
Enteral Nutrition	$342,251 (17%)	(1)	(1)
Wheelchairs and Accessories	(1)	(1)	$796,617 (19%)
General Orthotics	(1)	(1)	$89,462 (23%)

TABLE 11.—DMEPOS COMPETITIVE BIDDING DEMONSTRATION SAVINGS RATES—Continued

Product group	Polk County round 1	Polk County round 2	San Antonio
Nebulizer Drugs	(1)	(1)	$1,020,072 (26%)

Source: Evaluation of Medicare's Competitive Bidding Demonstration for DMEPOS, Final Evaluation Report (November 2003), pages 90 and 92.
[1] Not included.

In our estimates, we have taken into account that some DMEPOS prices have been adjusted downward since 2000. We assume that if prices for an individual item have already been reduced by 10 percent after the demonstrations were completed, then prices would most likely fall 10 percent rather than 20 percent. We, therefore, netted out any statutory reductions in prices that had already occurred such as the 2005 reductions in oxygen supplies.

Table 12 shows the fee-for-service program impact for the 10 policy groups. In the table, savings are reported as negative values. The savings are attributable to the lower prices anticipated from competitive bidding. The table shows the reduction in Medicare allowed charges, without any impact on Medicare Advantage, associated with the program for the calendar year. The impact includes reductions in Medicare payments (80 percent) and reductions in beneficiary co-insurance (20 percent).

TABLE 12.—PROGRAM IMPACT FOR 10 POLICY GROUPS IN MILLIONS*

	Year					
	2006	2007	2008	2009	2010	2011
Allowed Charges	−$0	−$38	−$120	−$844	−$1000	−$1,199
Medicare share of allowed charges (80% of allowed charges)	−0	−30	−96	−675	−800	−959
Beneficiary Costs (20% of allowed charges)	0	−8	−24	−169	−200	−240

* Numbers may not add up due to rounding.

Table 13 presents the impact differently than Table 12. In contrast to Table 12, which is on a Medicare-allowed-charge-incurred basis and is without considering the Medicare Advantage impact, Table 13 considers fiscal year cash impact on the entire Medicare Program including Medicare Advantage for the fiscal year rather than calendar year. The fiscal year—calendar year distinction is an important one when comparing savings. For example, the prices for the Medicare DMEPOS Competitive Bidding program will be in effect for 0 months of fiscal year 2007, but for 3 months of calendar year 2007.[1] Table 13 considers the impact on program expenditures, and does not include beneficiary coinsurance. Finally, the estimates in Table 13 incorporate spillover effects from the competitive acquisition program onto the MA program. The expectation is that lower prices for DME products in FFS will lead to lower prices in the MA market.[2]

TABLE 13.—FISCAL YEAR COST ON THE MEDICARE PROGRAM

[In millions]

Year	10 products
2006	$0
2007	0
2008	−110
2009	−620
2010	−990
2011	−1,230

E. Effect on Beneficiaries

Possible impacts on beneficiaries are a primary concern during the design and implementation of the program. While there may be some decrease in choice of suppliers, there will be a sufficient number of suppliers to ensure adequate access. We also expect there will be an improvement in quality because we will more closely scrutinize the suppliers before, during, and after implementation of the program. The analysis of the impact of the DMEPOS competitive bidding demonstration on patient access to care and quality showed minimal adverse results. Therefore, we assume that there will be no negative impacts on beneficiary access as a sufficient number of quality suppliers will be selected to serve the entire market.

We acknowledge that implementation of competitive bidding may result in some beneficiaries needing to switch from their current supplier if their current supplier is not selected for competitive bidding. However, we anticipate that the necessity of switching suppliers will be minimal in many product categories because of the existence of grandfather policies for products such as capped rentals.

We assume that beneficiary out of pocket expenses will decrease by 20 percent of program gross savings for those products for which we do competitive bidding.

TABLE 14.—BENEFICIARY CO-INSURANCE SAVINGS ESTIMATES FOR 10 PRODUCTS

[In millions]

Year	10 products
2007	$8
2008	24
2009	169
2010	200
2011	240

F. Effect on Suppliers

We expect DME suppliers to be significantly impacted by the implementation of the proposed rule. We assume that suppliers may be affected in one of 3 ways as follows:

[1] Fiscal year 2007 will end September 30, 2007, and the Medicare DMEPOS Competitive Bidding Program will begin on October 1, 2007.

[2] In addition, most managed care plan rates are linked to FFS expenditures, so a decrease in FFS expenditures should translate into a decrease in Medicare Advantage plan payment rates.

- Suppliers that wish to participate in competitive bidding will have to incur the cost of submitting a bid.
- Noncontract suppliers (including suppliers who do not submit bids) will see a decrease in revenues because they will no longer receive payment from Medicare for competitively bid items.
- Contract suppliers will see a decrease in expected revenue per item as a result of lower allowed charges from lower bid prices.

However, because there will be fewer suppliers, a supplier's volume could increase. As a result, because we do not know which effect will dominate, the net effect on an individual contract supplier's revenue is uncertain prior to bidding. The increase in the supplier's volume could offset the decrease in revenue per item.

1. Affected Suppliers

Based on 2003 claims data, the average MSA in the top 25 MSAs, excluding New York, Los Angeles, and Chicago, has 2754 DMEPOS suppliers that furnish any DMEPOS product and 1838 suppliers that furnish products subject to competitive bidding and could potentially be affected by competitive bidding.

We estimate that 27,540 suppliers will provide DMEPOS items in the CBAs that we initially designate. If suppliers furnish products in more than one MSA, we counted them more than once because they are affected in more than one MSA. Not all products are subject to competitive bidding; we estimate that only 18,383 suppliers will furnish products subject to competitive bidding and will be affected by competitive bidding. This means in 2006, the remaining 9157 suppliers in the 10 selected MSAs will not be affected by competitive bidding because they do not furnish products subject to competitive bidding. However, the actual number of affected suppliers may be smaller if we do not select all eligible product categories for competitive bidding.

Deciding whether or not to submit a bid is a business decision that will be made by each DMEPOS supplier. We expect that most suppliers providing covered services will choose to participate in order to maintain and expand their businesses. For the calculations below, we assume that 90 percent of suppliers will submit a bid. We assume the remaining 10 percent of suppliers will not have received the necessary accreditation to submit a bid. Based on this assumption, 16,545 suppliers will submit a bid because they will want the opportunity to continue to provide these products to Medicare beneficiaries and to expand their business base. We also assume, based on the results of the demonstration, that 50 percent of bidding suppliers will be selected as winners because approximately 50 percent of those who submitted bids during the demonstration were selected as contract suppliers. As a result, we expect that there will be 8272 contract suppliers and 10,111 non contract suppliers in the competitive bidding areas that we initially designate. The 10,111 suppliers that are not awarded a contract, either because they chose not to submit a bid or did not submit a winning bid would represent about 37 percent of the total DMEPOS suppliers in these CBAs. We expect that losing bidders will be distributed roughly proportionately across the selected CBAs, but the exact distribution will depend on the distribution of bids received and the number of winners selected in each CBA. It is important to note that there will be a revenue shift from the non contract suppliers to the contract suppliers, and that although some suppliers may be worse off, it is because they did not offer competitive prices or quality. We also note that if a supplier submitted a bid in multiple product categories, its probability of winning would increase, so that the total number of wining suppliers would be higher, and the number of non contract suppliers would be lower.

It is difficult to estimate how much revenue a losing supplier will lose because of the DMEPOS competitive acquisition program. The amount will depend on how much revenue the supplier previously received from Medicare and whether the supplier continues to provide services to existing patients under transition policies. Estimates can be made by making assumptions about these factors. For example, if bidding occurred in 10 product categories, losing suppliers previously provided 50 percent of allowed charges in these product categories, and losing suppliers did not continue to serve any existing patients, then the average lost Medicare allowed charges per losing supplier per CBA would be between $35,000 and $40,000. Under these assumptions, the total allowed charges lost by losing suppliers would be $275 million in 2008, the first full year after the prices take effect, and increase to almost $2 billion in 2011. These estimates reflect our best assumptions. As noted, because of the nature of competitive bidding, winning bidders will absorb much of the allowed charges lost by losing suppliers.

Suppliers who submit bids will incur a cost of bidding. In the demonstration, bidders in Polk County, Florida reported spending 40 to 100 hours submitting bids. We therefore assume that suppliers will use the midpoint number of hours, 70 hours, to complete their bids. According to 2003 Bureau of Labor Statistics (BLS) data, the average hourly wage for an accountant and auditor was $24.35. Accounting for inflation and overhead, we assume suppliers will incur $31.25 per hour in wage and overhead costs. Based on this information, we assume that a supplier that bids will spend $2,187.50 ($31.25*70) to prepare its bid. We calculate the total cost for all supplier bids, including those of both future winning and future losing suppliers. Therefore, we expect that 2006 total supplier bidding costs for 16,545 bids will be $36,192,187 ($2187.50*16545). This estimate is clearly dependent on our assumption that all eligible suppliers will bid.

In 2008, we will conduct competitive bidding in 80 MSAs, which may include New York, Los Angeles, and Chicago; and in 2009 and 2010 we will add additional areas. This will increase the number of affected suppliers, contract suppliers, and non contract suppliers. For the purposes of the impact analysis, we assume that there will be at least 10 additional large CBAs added in both 2009 and 2010. We also assume bid cycles will be three years in length. Under our assumptions, we will conduct bidding for programs that involve the initial 10 MSAs in 2006 and 2009, for programs that involve 70 additional MSAs in 2008 and 2011, and for programs that involve additional areas in 2009 and 2010. It is interesting to note that the average number of suppliers per CBA decreases over time. This is because smaller CBAs with fewer beneficiaries and lower allowed charges have fewer suppliers. Table 15 summarizes the effect on suppliers for 2006 through 2011.

TABLE 15.—SUPPLIERS BIDDING YEARS: 2006–2011

[10 product categories]

	Bidding year					
	2006	2007	2008	2009	2010	2011
Average number of suppliers per CBA	2754	2754	1863	1776	1687	1863
Average number of affected suppliers per CBA	1838	1838	1242	1183	1125	1242
Total number of suppliers	27540	27540	149035	159864	168702	149035
Total number of affected suppliers	18383	18383	99344	106439	112471	99344
Number of bidding suppliers	16545	0	72865	22930	5429	72865
Cost of bidding	$36,192,188	$0	$159,392,188	$50,159,375	$11,875,938	$159,392,188
Number of contract suppliers	8272	8272	44705	47898	50612	44705
Number of non contract suppliers	10111	10111	54639	58541	61859	54639
Non contract suppliers as a percent of total suppliers	37%	37%	37%	37%	37%	37%

[1] Actual numbers will depend on CBAs selected, product groups selected, number of suppliers that choose to submit a bid, the prices bid, and the number of contract suppliers selected.
[2] Some suppliers furnish products in more than one selected CBA. Consequently, some suppliers may be counted more than once.
[3] Numbers in the table are rounded.

2. Small Suppliers

We use the Small Business Administration definition of a small supplier. The SBA defines a small supplier in Home Health Equipment (NAICS Code 532291) as having less than $6 million in revenues. We do not have information on each supplier's total revenue. We only have information on suppliers' Medicare revenues. As a result, we had to make an assumption about what percent of a supplier's revenues come from Medicare. We looked at filings by public DMEPOS companies and based on that information, we assume one-half of the average supplier's revenues come from Medicare DEMPOS. We therefore classified a small supplier as any supplier with fewer than $3 million in Medicare allowed charges for all DMEPOS products whether or not they are eligible for competitive bidding. For example, an orthotics supplier's allowed charges could include charges for both customized and off-the-shelf orthotics, but customized orthotics are not subject to competitive bidding. By this definition, the majority of DMEPOS suppliers are small. Table 16 shows our estimate of the number of affected small suppliers and total affected suppliers. Some suppliers are counted more than once if they are affected in more than one CBA.

TABLE 16.—NUMBER OF SMALL SUPPLIERS [1]

[$3 million or less in Medicare allowed charges]

Bidding year	Number of affected small suppliers	Total number of affected suppliers	Percent
2006	16,741	18,383	91
2007	16,741	18,383	91
2008	88,912	99,344	90
2009	94,969	106,439	89
2010	100,083	112,471	89
2011	100,083	112,471	89

[1] Some suppliers furnish products in more than one selected CBA. Consequently, some suppliers may be counted more than once.

Small suppliers are likely to have similar costs for submitting bids as large suppliers. As discussed in the previous section, the average cost of submitting a bid in one CBA is $2187.50. The cost of bidding as a share of Medicare revenue will depend on the size of the small supplier's Medicare revenue. The share for a supplier with $50,000 in Medicare revenue would be 4.4 percent; the totals for suppliers with $100,000, $1,000,000, and $3,000,000 would be 2.2 percent, 0.2 percent, and less than 0.01 percent, respectively.

We considered the following options for minimizing the burden of competitive bidding on small businesses:

- Networking: As stated in section L of the preamble we discuss our proposal for allowing suppliers the option to form networks for bidding purposes. Networks are several companies joining together to submit bids for a product category under competitive bidding. This option will allow small suppliers to band together to lower bidding costs, expand service options, or attain more favorable purchasing terms. We recognize that forming a network may be challenging for suppliers, and it also poses challenges for bid evaluation and program monitoring.
- Not requiring bids for every product category: As discussed previously in the preamble, we are proposing to conduct separate bidding for items grouped together in product categories rather than conduct a single bidding program for all items. Therefore, small suppliers will have the option of deciding how many product categories for which they want to submit bids. We believe this will help minimize the burden on small suppliers.
- Another option we considered but did not accept would have allowed small suppliers to be exempted from the requirement that a contract supplier must service an entire CBA. This option

is also discussed in further detail in the preamble.

• We also considered the option to allow a small supplier to not submit a bid and then decide after the bidding whether or not they would accept the new competitive bidding single payment amounts. We are not accepting this option because the statue is clear about the requirement that suppliers must have submitted a bid in order to be a contract supplier. We believe that to allow this option would be an inappropriate interpretation of the statute.

G. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf),* in the following table below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the decreased expenditures in Medicare payments under the Medicare DMEPOS Competitive Bidding Program as a result of the changes presented in this proposed rule. All expenditures are classified as transfers to the Federal Government from DMEPOS suppliers.

TABLE 17.—ACCOUNTING STATEMENT—CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2007 TO FY 2011

Category	Transfers
Annualized Monetized Transfers	$570.3 (in Millions).
From Whom To Whom?	To Federal Government From Medicare DMEPOS Suppliers.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 411—EXCLUSIONS FOR MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

1. The authority for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusions of Particular Services

2. Section 411.15 is amended by—

A. Revising paragraph (b).

B. Adding new paragraph (s).

The revision and addition read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(b) *Low vision aid exclusion.* (1) *Scope.* The scope of the eyeglass exclusion encompasses all devices irrespective of their size, form, or technological features that use one or more lens to aid vision or provide magnification of images for impaired vision.

(2) *Exceptions.* (i) Post-surgical prosthetic lenses customarily used during convalescence for eye surgery in which the lens of the eye was removed (for example, cataract surgery).

(ii) Prosthetic intraocular lenses and one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens.

(iii) Prosthetic lenses used by Medicare beneficiaries who are lacking the natural lens of the eye and who were not furnished with an intraocular lens.

* * * * *

(s) Unless § 414.408(f)(2) of this chapter applies, Medicare does not make payment if an item or service that is included in a competitive bidding program (as described in part 414, subpart F of this chapter) is furnished by a supplier other than a contract supplier (as defined in § 414.402).

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

3. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

Subpart A—General Provisions

4. Section 414.1 is amended by adding in numerical order the statutory sections to read as follows:

§ 414.1 Basis and scope.

* * * * *

1842(s)—Fee schedules for parenteral and enteral nutrition (PEN) nutrients, equipment, and supplies and home dialysis supplies and equipment.

1847(a) and (b)—Competitive bidding for certain durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).

* * * * *

4a. The heading for subpart C is revised to read as follows:

Subpart C—Fee Schedules for Parenteral and Enteral Nutrition (PEN) Nutrients, Equipment, and Supplies, and Home Dialysis Supplies and Equipment

5. Section 414.100 is revised to read as follows:

§ 414.100 Purpose.

This subpart implements fee schedules for parenteral and enteral nutrition (PEN) items and services and home dialysis supplies and equipment as authorized by section 1842(s) of the Act.

6. Section 414.102 is revised to read as follows:

§ 414.102 General payment rules.

(a) *General rule.* For PEN items and services specified under paragraph (b) of this section and furnished on or after January 1, 2002, and for home dialysis supplies and equipment specified under paragraph (b) of this section and furnished on or after January 1, 2007, Medicare pays for the items and services on the basis of 80 percent of the lesser of—

(1) The actual charge for the item or service; or

(2) The fee schedule amount for the item or service, as determined in accordance with § 414.104 or § 414.107.

(b) *Payment classification.* (1) CMS or the carrier determines fee schedules for PEN nutrients, equipment, and supplies

in accordance with § 414.104, and the fee schedules for home dialysis supplies and equipment in accordance with § 414.107.

(2) CMS designates the specific items and services in each category through program instructions.

(c) *Updating the fee schedule amounts.* (1) For each calendar year subsequent to CY 2002, the fee schedule amounts of the preceding year for PEN items and services are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding calendar year.

(2) For each calendar year subsequent to CY 2007, the fee schedule amounts of the preceding year for home dialysis supplies and equipment are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding calendar year.

(d) *Establishing payment amounts for new items.* (1) The DMERC or local carrier uses the process described in paragraph (d)(3) of this section to establish the fee schedule amounts for the items and services included in a new HCPCS code created for a category of items and services payable under this subpart, but only if reasonable charge data are not available to calculate a fee schedule amount.

(2) The fee schedule amounts are updated in accordance with this subpart.

(3) CMS calculates the Medicare fee schedule amounts for the items and services described in paragraph (d)(1) of this section taking into account one or more of the following:

(i) The median retail price for items and services classified under the new HCPCS code. CMS determines the retail price for an individual item and service based on supplier price lists, manufacturer suggested retail prices, or wholesale prices plus an appropriate mark-up;

(ii) Fee schedule amounts for comparable items; or

(iii) A functional technology assessment of the items or services classified under the new HCPCS code that takes into account one or more of the following factors:

(A) Functional assessment.

(B) Price comparison analysis.

(C) Medical benefit assessment.

(4) A functional technology assessment described in paragraph (d)(2)(iii) of this section is also used to adjust fee schedule amounts calculated under paragraph (d)(2) of this section if CMS determines that these amounts do no reflect the costs of furnishing the item or service.

7. A new § 414.107 is added to read as follows:

§ 414.107 Home dialysis supplies and equipment.

(a) *Payment rules.* Payment for home dialysis supplies and equipment defined in § 410.52(a)(1) and (a)(2) of this chapter is made in a lump sum for supplies and equipment that are purchased, and on a monthly basis for supplies and equipment that are rented. Total payments per month for supplies and equipment may not exceed the payment limits described in § 414.330(c)(2) of this part.

(b) *Fee schedule amount.* The fee schedule amount for payment of home dialysis supplies and equipment defined in § 410.52(a)(1) and (a)(2) of this chapter and furnished in CY 2007 is the average reasonable charge for the supplies and equipment furnished from January 1, 2005 through December 31, 2005, increased by the percentage change in the CPI–U for the 24-month period ending June 2006.

Subpart D—Payment for Durable Medical Equipment and Prosthetic and Orthotic Devices

8. Section 414.210 is amended by adding a new paragraph (g) to read as follows:

§ 414.210 General payment rules.

* * * * *

(g) *Establishing fee schedule amounts for new items and services.* (1) The DMERC or local carrier uses the process described in paragraph (g)(2) of this section to establish the fee schedule amounts for the items and services included in a new HCPCS code created for a category of items and services payable under this subpart, but only if reasonable charge data are not available to calculate a fee schedule amount.

(i) The fee schedule amounts are updated in accordance with this subpart.

(ii) Items described in § 414.224 are not subject to paragraph (g)(1) of this section.

(2) CMS calculates the Medicare fee schedule amounts for the items and services described in paragraph (g)(1) of this section taking into account one or more of the following:

(i) The median retail price for items and services classified under the new HCPCS code (CMS determines the retail price for an individual item and service based on supplier price lists, manufacturer suggested retail prices, or wholesale prices plus an appropriate mark-up);

(ii) Existing fee schedule amounts for comparable items; or

(iii) A functional technology assessment of the items or services classified under the new HCPCS code that takes into account one or more of the following factors:

(A) Functional assessment.

(B) Price comparison analysis.

(C) Medical benefit assessment.

(3) A functional technology assessment described in paragraph (g)(2)(iii) of this section is also used to adjust fee schedule amounts calculated under paragraph (g)(2) of this section if CMS determines that these amounts do not reflect the costs of furnishing the item or service.

9. Section 414.228 is amended by adding paragraph (c) to read as follows:

§ 414.228 Prosthetic and orthotic devices.

* * * * *

(c) *Payment for therapeutic shoes.* The payment rules specified in paragraphs (a) and (b) of this section are applicable to custom molded and extra depth shoes, modifications, and inserts (therapeutic shoes) furnished after December 31, 2004.

Subpart E—Determination of Reasonable Charges Under the ESRD Program

10. Section 414.330 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 414.330 Payment for home dialysis equipment, supplies, and support services.

(a) * * *

(2) *Exception.* If the conditions in paragraphs (a)(2)(i) through (a)(2)(iv) of this section are met, Medicare pays for home dialysis equipment and supplies on a fee schedule basis in accordance with § 414.102, but the amount of payment may not exceed the limit for equipment and supplies described in paragraph (c)(2) of this section.

* * * * *

11. A new subpart F is added to read as follows:

Subpart F—Competitive Bidding for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

Sec.

414.400 Purpose.
414.402 Definitions.
414.404 Basis, scope, and applicability.
414.406 Implementation of programs.
414.408 Payment rules.
414.410 Phased-in implementation of competitive bidding programs.
414.412 Submission of bids under a competitive bidding program.
414.414 Conditions for awarding contracts.
414.416 Determination of competitive bidding payment amounts.
414.418 Opportunity for networks.
414.420 Physician or treating practitioner authorization and consideration of clinical efficiency and value of items.
414.422 Terms of contracts.

414.424 Administrative or judicial review.
414.426 Adjustments to competitive bidding payment amounts to reflect changes in the HCPCS.

Subpart F—Competitive Bidding for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

§ 414.400 Purpose.

This subpart implements competitive bidding programs for certain DMEPOS items as required by sections 1847(a) and (b) of the Act.

§ 414.402 Definitions.

For purposes of this subpart, the following definitions apply:

Bid means an offer to furnish an item for a particular price and time period that includes, where appropriate, any services that are directly related to the furnishing of the item.

Competitive bidding area (CBA) means an area established by the Secretary under this subpart.

Composite bid means the sum of a supplier's weighted bids for all items within a product category for purposes of allowing a comparison across bidding suppliers.

Competitive bidding program means a program established under this subpart.

Contract supplier means an entity that is awarded a contract by CMS to furnish items under a competitive bidding program.

DMEPOS stands for durable medical equipment, prosthetics, orthotics and supplies.

Grandfathered item means any one of the following items for which payment is made on a rental basis prior to the implementation of a competitive bidding program under this subpart:

(1) An inexpensive or routinely purchased item described in § 414.220.

(2) An item requiring frequent and substantial servicing, as described in § 414.222.

(3) Oxygen and oxygen equipment described in § 414.226.

(4) A capped rental item described in § 414.229.

Grandfathered supplier means a noncontract supplier that furnishes a grandfathered item.

Item means one of the following products identified by a HCPCS code, other than class III devices under the Federal Food, Drug and Cosmetic Act and inhalation drugs, and includes the services directly related to the furnishing of that product to the beneficiary:

(1) Durable medical equipment (DME), as defined in § 414.202 of this part and further classified into the following categories:

(i) Inexpensive or routinely purchased items, as specified in § 414.220(a).

(ii) Items requiring frequent and substantial servicing, as specified in § 414.222(a).

(iii) Oxygen and oxygen equipment, as specified in § 414.226(b).

(iv) Other durable medical equipment (capped rental items), as specified in § 414.229.

(2) Supplies necessary for the effective use of DME.

(3) Enteral nutrients, equipment, and supplies.

(4) Off-the-shelf orthotics, which are orthotics described in section 1861(s)(9) of the Act that require minimal self-adjustment for appropriate use and do not require expertise in trimming, bending, molding, assembling, or customizing to fit a beneficiary.

Item weight is a number assigned to an item based on its beneficiary utilization rate in a competitive bidding area when compared to other items in the same product category.

Metropolitan Statistical Area (MSA) has the same meaning as that given by the Office of Management and Budget.

Nationwide competitive bidding area means a competitive bidding area that includes the United States and its territories.

Noncontract supplier means a supplier that is located in a competitive bidding area or that furnishes items through the mail to beneficiaries in a competitive bidding area but that is not awarded a contract by CMS to furnish items included in a competitive bidding program for that area.

Physician has the same meaning as in section 1861(r)(1) of the Act.

Pivotal bid means the highest composite bid based on bids submitted by a suppliers for a product category that will include a sufficient number of suppliers to meet beneficiary demand for the items in that product category.

Product category means a grouping of related items that are included in a competitive bidding program.

Single payment amount means the allowed payment for an item furnished under a competitive bidding program.

Supplier means an entity with a valid Medicare supplier number, including an entity that furnishes an item through the mail.

Treating practitioner means a physician assistant, nurse practitioner, or clinical nurse specialist, as those terms are defined in section 1861(aa)(5) of the Act.

Weighted bid means the item weight multiplied by the bid price submitted for that item.

§ 414.404 Basis, scope, and applicability.

This subpart applies to the following entities that furnish the items described in § 414.402 to beneficiaries under a competitive bidding program:

(a) Suppliers.

(b) Providers that furnish items under Medicare Part B as suppliers.

(c) Physicians that furnish items under Medicare Part B as suppliers.

§ 414.406 Implementation of programs.

(a) *Implementation contractor.* CMS designates one or more implementation contractors for the purpose of implementing this subpart.

(b) *Competitive bidding areas.* CMS designates through program instructions each competitive bidding area in which a competitive bidding program may be implemented under this subpart.

(c) *Revisions to competitive bid.* CMS may revise the competitive bidding areas designated under paragraph (b) of this section.

(d) *Competitively bid items.* CMS designates the items that are included in a competitive bidding program through program instructions.

(e) *Claims processing.* The regional carrier designated under § 421.210 of this chapter to process DMEPOS claims for a particular geographic region also processes claims for items furnished under a competitive bidding program in the same geographic region.

§ 414.408 Payment rules.

(a) *Payment basis.* (1) The payment basis for an item furnished under a competitive bidding program is 80 percent of the single payment amount calculated for the item under § 414.416 for the competitive bidding area in which the beneficiary maintains a permanent residence.

(2) If an item that is included in a competitive bidding program is furnished to a beneficiary who does not maintain a permanent residence in a competitive bidding area, the payment basis for the item is 80 percent of the lesser of the actual charge for the item, or the applicable fee schedule amount for the item, as determined under subparts C or D of this part.

(b) *Updating the single payment amounts.* Beginning with the second year of a contract entered into under this subpart, the single payment amounts are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding calendar year.

(c) *Payment on an assignment-related basis.* Payment for an item furnished under this subpart is made on an assignment-related basis.

(d) *Applicability of advanced beneficiary notice.* Implementation of a

program in accordance with this subpart does not preclude the use of an advanced beneficiary notice.

(e) *Adjustment of payment amounts in other areas.* For items furnished to Medicare beneficiaries on or after January 1, 2009 for which payment is made under this subpart, CMS may use the single payment amounts determined under § 414.416 of this subpart to adjust the amounts Medicare pays for the same items in areas that are not designated as competitive bidding areas.

(f) *Requirement to obtain competitively bid items from a contract supplier.* (1) *General rule.* All items that are included in a competitive bidding program must be furnished by a contract supplier for that program.

(2) *Exceptions.* (i) A grandfathered supplier may furnish a grandfathered item to a beneficiary in accordance with paragraph (k) of this section.

(ii) If a beneficiary is outside of the competitive bidding area in which he or she maintains a permanent residence, he or she may obtain an item included in the competitive bidding program for that area from a—

(A) Contract supplier, if the beneficiary is in another competitive bidding area and the item is included in the competitive bidding program for that area; or

(B) Supplier, if the beneficiary is not in another competitive bidding area.

(iii) Unless paragraph (f)(2) of this section applies, a beneficiary who maintains a permanent residence in a competitive bidding area has no financial liability to a supplier that furnishes an item included in the competitive bidding program for that area in violation of paragraph (f)(1) of this section.

(3) CMS separately designates the supplier numbers of all noncontract suppliers to monitor compliance with paragraph (f)(1) of this section.

(g) *Purchased equipment.* (1) The single payment amounts for new purchased durable medical equipment, including power wheelchairs that are purchased when the equipment is initially furnished, and enteral nutrition equipment, if included under a competitive bidding program, are calculated based on the bids submitted and accepted for these items. (2) Payment for used purchased durable medical equipment and enteral nutrition equipment, if included under a competitive bidding program, is made in an amount equal to 75 percent of the single payment amounts calculated for new purchased equipment under paragraph (g)(1) of this section.

(h) *Purchased supplies and orthotics.* The single payment amounts for the following purchased items, if included under a competitive bidding program, are calculated based on the bids submitted and accepted for the following items:

(1) Supplies used in conjunction with durable medical equipment.

(2) Enteral nutrients.

(3) Enteral nutrition supplies.

(4) Orthotics.

(i) *Rented equipment.* (1) Payment for capped rental durable medical equipment, if included under a competitive bidding program, is made in an amount equal to 10 percent of the single payment amounts calculated for new durable medical equipment under paragraph (g)(1) of this section for each of the first 3 months, and 7.5 percent of the single payment amounts calculated for these items for each of the remaining months 4 through 13.

(2) Separate maintenance and servicing payments will not be made for any rented equipment. Payment for maintenance and servicing of rented equipment is included in the single payment amount for rental of the item.

(3) Payment for enteral nutrition equipment, if included under a competitive bidding program, is made in an amount equal to 10 percent of the single payment amounts calculated for new enteral nutrition equipment under paragraph (g)(1) of this section for each of the first 3 months, and 7.5 percent of the single payment amount calculated for these items under paragraph (g)(1) of this section for each of the remaining months 4 through 15. The contract supplier to which payment is made in month 15 for furnishing enteral nutrition equipment on a rental basis must continue to furnish, maintain and service the equipment until a determination is made by the beneficiary's physician or treating practitioner that the equipment is no longer medically necessary.

(4) Payment for the maintenance and servicing of rented enteral nutrition equipment, if included under a competitive bidding program, is made in an amount equal to 5 percent of the single payment amounts calculated for these items under paragraph (g)(1) of this section.

(5) Payment for inexpensive or routinely purchased durable medical equipment furnished on a rental basis, if included under a competitive bidding program, is made in an amount equal to 10 percent of the single payment amount calculated for new purchased equipment.

(6) The single payment amounts for rented durable medical equipment requiring frequent and substantial servicing, if included under a competitive bidding program, are calculated based on the bids submitted and accepted for these items.

(j) *Monthly payment amounts for oxygen and oxygen equipment.* The single payment amounts for oxygen and oxygen equipment, if included under a competitive bidding program, are calculated based on the separate bids submitted and accepted for the furnishing on a monthly basis of each of the four categories of oxygen and oxygen equipment described in § 414.226(b)(1)(i) through (b)(1)(iv).

(k) *Special rules for certain rented durable medical equipment and oxygen and oxygen equipment.* (1) *Supplier election.* (i) A supplier that is furnishing DME on a rental basis or is furnishing oxygen and oxygen equipment on a monthly basis to a beneficiary prior to the implementation of a competitive bidding program in the area where the beneficiary maintains a permanent residence may elect to continue furnishing the item as a grandfathered supplier.

(ii) A supplier that elects to be a grandfathered supplier must continue to furnish a grandfathered item to all beneficiaries who elect to continue receiving the grandfathered item from that supplier.

(2) *Payment for grandfathered items furnished during the first competitive bidding program implemented in an area.* Medicare pays for grandfathered items furnished during the first competitive bidding program implemented in an area as follows:

(i) For items described in § 414.220, payment is made in the amount determined under § 414.220(b).

(ii) For items that meet the definition of a capped rental item in § 414.229, payment is made in the amount determined under § 414.229(b).

(iii) For items described in § 414.222, payment is made in the amount determined under § 414.416.

(iv) For items described in § 414.226, payment is made in the amount determined under § 414.416.

(3) *Payment for grandfathered items furnished during all subsequent competitive bidding programs in an area.* Beginning with the second competitive bidding program implemented in an area, payment is made for grandfathered items in the amounts determined under § 414.416.

(4) *Choice of suppliers.* (i) Beneficiaries described in paragraph (k)(1) of this section may elect to obtain a grandfathered item from a grandfathered supplier.

(ii) A beneficiary who is otherwise entitled to obtain an item from a grandfathered supplier under paragraph

(k) of this section may elect to obtain the same item from a contract supplier at any time after a competitive bidding program is implemented.

(iii) If a beneficiary elects to obtain the item from a contract supplier, payment is made for the item in the amount determined under § 414.416.

§ 414.410 Phased-in implementation of competitive bidding programs.

(a) *Phase-in of MSA for CY 2007, CY 2009, and subsequent calendar years.* CMS phases in competitive bidding programs so that competition under the programs occurs in—

(1) Ten of the largest MSAs in CY 2007;

(2) Eighty of the largest MSAs in CY 2009;

(3) Additional areas after CY 2009.

(b) *Selection of MSAs for CY 2007 and CY 2009.* CMS selects the MSAs for purposes of designating competitive bidding areas in CY 2007 and CY 2009 by considering the following variables:

(1) The total population of an MSA.

(2) The Medicare allowed charges for DMEPOS items per fee-for-service (FFS) beneficiary in an MSA.

(3) The total number of DMEPOS suppliers per FFS beneficiary that received DMEPOS items in an MSA.

(4) An MSA's geographic location.

(c) *Exclusions from a competitive bidding area.* CMS may exclude from a competitive bidding area a rural area (as defined in § 412.64(b)(1)(ii)(C) of this chapter), or an area with low population density based on the following factors—

(1) Low utilization of DMEPOS items by Medicare FFS beneficiaries relative to similar geographic areas;

(2) Low number of DMEPOS suppliers relative to similar geographic areas; or

(3) Low number of Medicare FFS beneficiaries relative to similar geographic areas.

(d) *Selection of additional areas after CY 2009.* (1) Beginning in CY 2010, CMS designates additional competitive bidding areas based on CMS' determination that the implementation of a competitive bidding program in an area is likely to result in significant savings to the Medicare program.

(2) CMS may designate one or more regional or nationwide competitive bidding areas for purposes of implementing competitive bidding programs for items that are furnished through the mail.

§ 414.412 Submission of bids under a competitive bidding program.

(a) In order for a supplier to receive payment for items furnished to beneficiaries under a competitive bidding program, the supplier must submit a bid to furnish those items and be awarded a contract under this subpart.

(b) Bids are submitted for items grouped into product categories.

(c) Product categories include items that are used to treat a related medical condition. The list of product categories, and the items included in each product category that is included in a particular competitive bidding program, are identified in the request for bids for that competitive bidding program.

(d) Suppliers must submit a separate bid for every item included in each product category that they are seeking to furnish under a competitive bidding program.

(e) A bid must include all costs related to furnishing an item, including all services directly related to the furnishing of the item.

(f) *Mail order suppliers.* (1) Suppliers that furnish items through the mail must submit a bid to furnish these items in any area in which a competitive bidding program is implemented which includes the items.

(2) Suppliers that submit one or more bids under paragraph (f)(1) of this section may submit the same bid amount for each item under each competitive bidding program for which it submits a bid.

(g) *Applicability of the mail order program.* Suppliers that do not furnish items through the mail are not required to participate in a national or regional mail order competitive bidding program that includes the same items. Suppliers may continue to furnish these items in—

(1) A competitive bidding area, if the supplier is awarded a contract under this subpart; or

(2) An area not designated as a competitive bidding area.

§ 414.414 Conditions for awarding contracts.

(a) *General rule.* The rules set forth in this section govern the evaluation and selection of suppliers for contract award purposes under a competitive bidding program.

(b) *Basic supplier eligibility.* (1) Each bidding supplier must meet the enrollment standards specified in § 424.57 of this chapter.

(2) Each bidding supplier must—

(i) Certify in its bid that it, its high level employees, chief corporate officers, members of its board of directors, its affiliated companies, and its subcontractors are not now and was not sanctioned by any governmental agency or accreditation or licensing organization, or

(ii) Disclose information about any prior or current legal actions, sanctions, or debarments by any Federal, State or local program, including actions against any members of the board of directors, chief corporate officers, high-level employees, affiliated companies, and subcontractors.

(3) Each bidding supplier must submit with its bid evidence of all State and local licenses required to perform the services identified in its response to the request for bids.

(4) Each bidding supplier must agree to all the terms contained in the request for bids and the supplier contract.

(c) *Quality standards and accreditation.* (1) *Quality standards.* All bidding suppliers must meet applicable quality standards developed by CMS in accordance with section 1834(a)(20) of the Act.

(2) *Accreditation.* (i) All bidding suppliers must be accredited by a CMS approved accreditation organization, as defined under § 424.57(a) of this chapter.

(ii) A supplier satisfies paragraph (c)(2)(i) of this section if it was accredited by an organization that CMS designates as a CMS-approved accreditation organization under § 424.58 of this chapter.

(d) *Financial standards.* All suppliers must meet the applicable financial standards specified in the request for bids.

(e) *Evaluation of bids.* CMS evaluates bids submitted for a product category by—

(1) Calculating the expected beneficiary demand in a competitive bidding area for items in a product category;

(2) Establishing a composite bid for each supplier that submitted a bid for the product category;

(3) Arraying the composite bids from the lowest to the highest;

(4) Calculating the pivotal bid for the product category; and

(5) Selecting all bidding suppliers whose composite bids are less than or equal to the pivotal bid for that product category, and that meet the requirements in paragraphs (b) through (d) of this section.

(f) *Expected savings.* CMS does not award a contract under this subpart unless CMS determines that the amounts to be paid to a contract supplier for an item under a competitive bidding program are expected to be less than the amounts that would otherwise be paid for the same item under subparts C or D of this part.

(g) *Sufficient number of suppliers.* If the requirements in paragraphs (e)(5) and (f) of this section are satisfied by two or more suppliers for a product category under a competitive bidding

program, then CMS awards at least two contracts for the furnishing of that product category under a competitive bidding program.

(h) *Selection of new suppliers after bidding.* (1) Subsequent to the awarding of contracts under this subpart, CMS may award additional contracts if it determines that additional contract suppliers are needed to meet beneficiary demand for items under a competitive bidding program. CMS selects additional contract suppliers by—

(i) Referring to the arrayed list of suppliers that submitted bids for the product category included in the competitive bidding program for which beneficiary demand is not being met; and

(ii) Beginning with the supplier whose composite bid is the first composite bid above the pivotal bid for that product category, determining if that supplier is willing to become a contract supplier under the same terms and conditions that apply to other contract suppliers in the competitive bidding area.

(2) Before CMS awards additional contracts under paragraph (h)(1) of this section, a supplier must submit updated eligibility information, and CMS must determine that the supplier continues to meet the requirements under paragraphs (b) through (d) of this section.

§ 414.416 Determination of competitive bidding payment amounts.

(a) *General rule.* CMS establishes a single payment amount for each item furnished under a competitive bidding program.

(b) *Methodology for setting payment amount.* (1) The single payment amount for an item furnished under a competitive bidding program is equal to the median of the accepted bids for that item that are at or below the pivotal bid for the product category that includes the item.

(2) The single payment amount for an item must be less than the amount that would otherwise be paid for the same item under subparts C or D of this part.

(c) *Rebate.* (1) A contract supplier that submitted a bid for an item in an amount that is below the single payment amount calculated by CMS for that item may elect to issue a rebate.

(2) A contract supplier that elects to offer a rebate under paragraph (c)(1) of this section must agree to issue the same rebate to all beneficiaries to whom it furnishes an item to which a rebate applies.

(3) A contract supplier's election to offer a rebate will be included as an express term in the contract supplier's contract to furnish items under this subpart.

(4) The rebate election cannot be amended or otherwise modified during the term of the contract.

(5) A contract supplier may not advertise that it issues a rebate for any item furnished under this subpart.

§ 414.418 Opportunity for networks.

(a) For purposes of this section, a network is comprised of at least two suppliers that collectively submit a single bid to furnish the items included in a product category under a competitive bidding program.

(b) The following rules apply to networks that seek contracts under this subpart:

(1) Each network must form a single legal entity that acts as the bidder and submits the bid. Any agreement entered into for purposes of forming a network must be submitted to CMS.

(2) Each member of the network must be independently eligible to bid. If CMS determines that a member of the network is ineligible to bid, CMS notifies the network, and the network has 10 business days to resubmit its bid.

(3) Each network member must meet all accreditation and quality standards that are required. Each member is responsible for the quality of care, service, and items that it furnishes to Medicare beneficiaries. If any network member does not comply with this requirement, CMS may terminate its contract with the network.

(4) The network cannot be anticompetitive. The network members' market shares for a product category, when added together, cannot exceed 20 percent of the Medicare market within a competitive bidding area.

(5) A supplier may only join one network and cannot submit individual bids if part of a network. The network must identify itself as a network and identify all of its members.

(6) The network must designate a primary contract supplier among its members. The primary contract supplier bills and receives payment on behalf of the network members. The primary contract supplier is responsible for appropriately distributing reimbursement to other network members.

§ 414.420 Physician or treating practitioner authorization and consideration of clinical efficiency and value of items.

(a) A physician or treating practitioner may prescribe in writing a particular brand of an item for which payment is made under a competitive bidding program, or a particular mode of delivery for an item, if he or she determines that the particular brand or mode of delivery would avoid an adverse medical outcome for the beneficiary.

(b)(1) The contract supplier must make a reasonable effort to furnish the particular brand or mode of delivery of an item as prescribed by the physician or treating practitioner.

(2) A contract supplier that, despite making a reasonable effort under paragraph (b)(1) of this section, cannot furnish an item as prescribed under paragraph (a) of this section, must consult with the physician or treating practitioner to find an appropriate item, or mode of delivery, for the beneficiary.

(3) Any change to a prescription made in accordance with paragraph (b)(2) of this section must be memorialized in a revised written prescription.

(c) Medicare does not make an additional payment to a contract supplier that furnishes a particular item or provides a particular mode of delivery for an item, as directed by a prescription written by the beneficiary's physician or treating practitioner.

(d) A contract supplier is prohibited from billing Medicare if it furnishes an item different from that specified in the written prescription received from the beneficiary's physician or treating practitioner.

§ 414.422 Terms of contracts.

(a) A contract supplier must comply with all terms of its contract, including any option exercised by CMS, for the full duration of the contract period.

(b) *Recompeting competitive bidding contracts.* CMS recompetes competitive bidding contracts at least once every 3 years.

(c) *Repair and replacement of patient owned equipment.* (1) Beneficiary owned items furnished under a competitive bidding program must be serviced by a contract supplier for that competitive bidding program, and a contract supplier must agree to service all items included in its contract and furnished to any beneficiary who maintains a permanent residence in that contract supplier's competitive bidding area.

(2) Paragraph (c)(1) of this section does not apply if the beneficiary is outside the competitive bidding area.

(d) *Change of ownership.* (1) A contract supplier must notify CMS in writing 60 days prior to any change of ownership, mergers or acquisitions.

(2) CMS may award a contract to an entity that merges with, or acquires, a contract supplier if—

(i) CMS determines that awarding a contract to the successor entity is necessary to ensure that beneficiary

demand for the items furnished by the contract supplier continues to be met;

(ii) The successor entity meets all requirements applicable to contract suppliers for the applicable competitive bidding program;

(iii) The successor entity agrees to assume all obligations and liabilities borne by the prior contract supplier under the contract;

(iv) The successor entity executes a novation agreement.

(e) *Furnishing of items.* (1) A contract supplier must agree to furnish items under a competitive bidding program to any beneficiary who maintains a permanent residence in, or who visits, the competitive bidding area and who requests those items from that contract supplier.

(2) *Exceptions.* (i) A skilled nursing facility defined under section 1819(a) of the Act that is also a contract supplier must agree to furnish items under a competitive bidding program to patients to whom it would otherwise furnish Part B services.

(ii) A physician that is also a contract supplier must agree to furnish items under the competitive bidding program to his or her patients.

(f) *Breach of contract.* (1) Any deviation from contract requirements, including a failure to comply with governmental agency or licensing organization requirements, constitutes a breach of contract.

(2) In the event a contract supplier breaches the contract, CMS may take one or more of the following actions:

(i) Require the contract supplier to correct the breach condition;

(ii) Suspend performance under the contract;

(iii) Terminate the contract for default (which may include requiring the contract supplier to reimburse CMS' reprocurement costs);

(iv) Preclude the contract supplier from participating in the competitive bidding program;

(v) Revoke the supplier number of the contract supplier; or

(vi) Avail itself of other remedies allowed by law.

(g) CMS has the right to terminate performance under the contract in whole or in part when termination would be in CMS' interest.

§ 414.424 Administrative or judicial review.

(a) There is no administrative or judicial review under this subpart of the following:

(1) Establishment of payment amounts.

(2) Awarding of contracts.

(3) Designation of competitive bidding areas.

(4) Phase-in of the competitive bidding programs.

(5) Selection of items for competitive bidding.

(6) Bidding structure and number of contract suppliers selected for a competitive bidding program.

(b) A denied claim is not appealable if CMS determines that a competitively bid item was furnished in a competitive bidding area in a manner not authorized by this subpart.

§ 414.426 Adjustments to competitively bid payment amounts to reflect changes in the HCPCS.

If a HCPCS code for a competitively bid item is revised during a competitive bidding program, CMS adjusts the single payment amount for that item as follows:

(a) If a single HCPCS code for an item is divided into multiple codes for the components of that item, the sum of single payment amounts for the new codes equals the single payment amount for the original item, and contract suppliers must furnish the components of the item in accordance with the new codes.

(b) If a single HCPCS code for two or more similar items is divided into two or more separate codes, the single payment amount applied to these codes is the same single payment amount applied to the single code, and contract suppliers must furnish the items in accordance with the new codes.

(c) If the HCPCS codes for components of an item are merged into a single code for the item, the single payment amount for the new code is equal to the total of the separate single payment amounts for the components, and contract suppliers must furnish the item in accordance with the new code.

(d) If multiple codes for similar items are merged into a single code, the single payment amount for the new single code is the average (arithmetic mean) weighted by the frequency of payments for the formerly separate codes, and contract suppliers must furnish the item under the new single code.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

12. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

13. Section 424.1 is amended by adding in numerical order the statutory sections to read as follows:

§ 424.1 Basis and scope.

* * * * *

1834(a)—Payment for durable medical equipment.

1834(j)—Requirements for suppliers of medical equipment and supplies.

* * * * *

Subpart D—To Whom Payment is Ordinarily Made

14. Section 424.57 is amended by—

A. Adding the definitions ''Accredited DMEPOS supplier,'' ''CMS approved accreditation organization'' and ''Independent accreditation organization'' in alphabetical order in paragraph (a).

B. Adding a new paragraph (c)(22).

The additions read as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

(a) Definitions. * * *

* * * * *

Accredited DMEPOS supplier means a supplier that has been accredited by a recognized independent accreditation organization meeting the requirements of and approved by CMS in accordance with § 424.58.

CMS approved accreditation organization means a recognized independent accreditation organization approved by CMS under § 424.58.

* * * * *

Independent accreditation organization means an accreditation organization that accredits a supplier of DMEPOS and other items and services for a specific DMEPOS product category or a full line of DMEPOS product categories.

* * * * *

(c) *Application certification standards.* * * *

(22) All suppliers of DMEPOS and other items and services must be accredited by a CMS approved accreditation organization before receiving a supplier billing number.

* * * * *

15. A new § 424.58 is added to read as follows:

§ 424.58 Accreditation.

(a) *Scope and purpose.* This part implements section 1834(a)(20)(B) of the Act, which requires the Secretary to designate and approve one or more independent accreditation organizations for purposes of enforcing the quality standards for suppliers of DMEPOS and other items of service. Section 1847(b)(2)(A)(i) of the Act requires a DMEPOS supplier to meet the quality standards under section 1834(a)(20) of

the Act before being awarded a contract under part 414, subpart F of this chapter.

(b) *Application and reapplication procedures for accreditation organizations.* (1) An independent accreditation organization applying for approval or reapproval of authority to survey suppliers for compliance with Medicare DMEPOS supplier quality standards is required to furnish the following to CMS:

(i) A list of the product-specific types of DMEPOS suppliers for which the organization is requesting approval.

(ii) A detailed comparison of the organization's accreditation requirements and standards with the applicable Medicare quality standards, such as a crosswalk.

(iii) A detailed description of the organization's survey process, including procedures for performing unannounced surveys, frequency of the surveys performed, copies of the organization's survey forms, guidelines and instructions to surveyors, accreditation survey review process and the accreditation status decision-making process.

(iv) Procedures used to notify suppliers of compliance or noncompliance with the accreditation requirements.

(v) Procedures used to monitor the correction of deficiencies found during an accreditation survey.

(vi) Procedures for coordinating surveys with another accrediting organization if the organization does not accredit all products the supplier provides.

(vii) Detailed professional information about the individuals who perform surveys for the accreditation organization, including the size and composition of accreditation survey teams for each type of supplier accredited, and the education and experience requirements surveyors must meet. The information must include the following:

(A) The content and frequency of the continuing education training provided to survey personnel.

(B) The evaluation systems used to monitor the performance of individual surveyors and survey teams.

(C) Policies and procedures for a surveyor or institutional affiliate of the independent accrediting organization that participates in a survey or accreditation decision regarding a DMEPOS supplier with which that individual or institution is professionally or financially affiliated.

(viii) A description of the organization's data management, analysis and reporting system for its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.

(ix) Procedures for responding to, and investigating complaints against, accredited facilities, including policies and procedures regarding coordination of these activities with appropriate licensing bodies, ombudsmen programs, the National Supplier Clearinghouse, and CMS.

(x) The organization's policies and procedures for notifying CMS of facilities that fail to meet the accreditation organization's requirements.

(xi) A description of all types, categories, and durations of accreditations offered by the organization.

(xii) A list of the following:

(A) All currently accredited DMEPOS suppliers.

(B) The types and categories of accreditation currently held by each supplier.

(C) The expiration date of each supplier's current accreditation.

(D) The upcoming survey cycles for all DMEPOS suppliers' accreditation surveys scheduled to be performed by the organization. (xiii) A written presentation that demonstrates the organization's ability to furnish CMS with electronic data in ASCII comparable code.

(xiv) A resource analysis that demonstrates that the organization's staffing, funding and other resources are adequate to perform fully the required surveys and related activities.

(xv) An agreement that makes surveyors available as witnesses if CMS takes an adverse action based on accreditation findings.

(2) *Validation survey.* CMS surveys suppliers of DMEPOS and other items and services accredited under this section on a representative sample basis, or in response to substantial allegations of noncompliance, in order to validate the accreditation organization's survey process. When conducted—

(i) On a representative sample basis, the CMS survey may be comprehensive or focus on a specific standard;

(ii) In response to a substantial allegation, CMS surveys for any standard that CMS determines is related to the allegations.

(3) *Discovery of a deficiency.* If CMS discovers a deficiency and determines that the DMEPOS supplier is out of compliance with Medicare supplier quality standards, CMS may revoke the suppliers' billing number or require the accreditation organization to perform a subsequent full accreditation survey at the accreditation organization's expense.

(4) *A supplier selected for a validation survey.* A supplier selected for a validation survey must authorize the—

(i) Validation survey to take place; and

(ii) CMS survey team to monitor the correction of any deficiencies found through the validation survey.

(5) *Refusal to cooperate with survey.* If a supplier selected for a validation survey fails to comply with the requirements specified at paragraph (b)(4) of this section, it is deemed to no longer meet the Medicare supplier quality standards and may have its supplier billing number revoked.

(6) *Validation survey findings.* If a validation survey results in a finding that the supplier is out of compliance with one or more Medicare supplier quality standards, the supplier no longer meets the Medicare standards and may have its supplier billing number revoked.

(c) *Ongoing responsibilities of a CMS approved accreditation organization.* An accreditation organization approved by CMS must undertake the following activities on an ongoing basis:

(1) Provide to CMS all of the following in written format and on a monthly basis all of the following:

(i) Copies of all accreditation surveys, together with any survey-related information that CMS may require (including corrective action plans and summaries of unmet CMS requirements).

(ii) Notice of all accreditation decisions.

(iii) Notice of all complaints related to suppliers of DMEPOS and other items and services.

(iv) Information about any suppliers of DMEPOS and other items and services against which the CMS approved accreditation organization has taken remedial or adverse action, including revocation, withdrawal, or revision of the supplier's accreditation.

(v) Notice of any proposed changes in its accreditation standards or requirements or survey process. If the organization implements the changes before or without CMS' approval, CMS may withdraw its approval of the accreditation organization.

(2) Within 30 days of a change in CMS requirements, submit to CMS:

(i) An acknowledgment of CMS' notification of the change.

(ii) A revised cross-walk reflecting the new requirements.

(iii) An explanation of how the accreditation organization plans to alter its standards to conform to CMS's new requirements, within the timeframes

specified in the notification of change it receives from CMS.

(3) Permit its surveyors to serve as witnesses if CMS takes an adverse action based on accreditation findings.

(4) Within 2 calendar days of identifying a deficiency of an accredited DMEPOS supplier that poses immediate jeopardy to a beneficiary or to the general public, provide CMS with written notice of the deficiency and any adverse action implemented by the accreditation organization.

(5) Within 10 days after CMS's notice to a CMS approved accreditation organization that CMS intends to withdraw approval of the accreditation organization, provide written notice of the withdrawal to all the CMS approved accreditation organization's accredited suppliers.

(6) Provide, on an annual basis, summary data specified by CMS that relate to the past year's accreditation activities and trends.

(d) *Continuing Federal oversight of approved accreditation organizations.* This paragraph establishes specific criteria and procedures for continuing oversight and for withdrawing approval of a CMS approved accreditation organization.

(1) *Equivalency review.* CMS compares the accreditation organization's standards and its application and enforcement of those standards to the comparable CMS requirements and processes when—

(i) CMS imposes new requirements or changes its survey process;

(ii) An accreditation organization proposes to adopt new standards or changes in its survey process; or

(iii) The term of an accreditation organization's approval expires.

(2) *Validation survey.* CMS or its designated survey team may conduct a survey of an accredited DMEPOS supplier, examine the results of a CMS approved accreditation organization's survey of a supplier, or observe a CMS approved accreditation organization's onsite survey of a DMEPOS supplier, in order to validate the CMS approved accreditation organization's accreditation process. At the conclusion of the review, CMS identifies any accreditation programs for which validation survey results indicate—

(i) A 10 percent rate of disparity between findings by the accreditation organization and findings by CMS or its designated survey team on standards that do not constitute immediate jeopardy to patient health and safety if unmet;

(ii) Any disparity between findings by the accreditation organization and findings by CMS on standards that constitute immediate jeopardy to patient health and safety if unmet; or

(iii) That, irrespective of the rate of disparity, there are widespread or systemic problems in an organization's accreditation process such that accreditation by that accreditation organization no longer provides CMS with adequate assurance that suppliers meet or exceed the Medicare requirements.

(3) *Notice of intent to withdraw approval.* CMS provides the organization written notice of its intent to withdraw approval if an equivalency review, validation review, onsite observation, or CMS's daily experience with the accreditation organization suggests that the accreditation organization is not meeting the requirements of this section.

(4) *Withdrawal of approval.* CMS may withdraw its approval of an accreditation organization at any time if CMS determines that—

(i) Accreditation by the organization no longer guarantees that the suppliers of DMEPOS and other items and services are meeting the supplier quality standards, and that failure to meet those requirements could jeopardize the health or safety of Medicare beneficiaries and could constitute a significant hazard to the public health; or

(ii) The accreditation organization has failed to meet its obligations with respect to application or reapplication procedures.

(e) *Reconsideration.* (1) An accreditation organization dissatisfied with a determination that its accreditation requirements do not provide or do not continue to provide reasonable assurance that the entities accredited by the accreditation organization meet the applicable supplier quality standards is entitled to a reconsideration. CMS reconsiders any determination to deny, remove, or not renew the approval of deeming authority to accreditation organizations if the accreditation organization files a written request for reconsideration by its authorized officials or through its legal representative.

(2) The request must be filed within 30 days of the receipt of CMS notice of an adverse determination or non renewal.

(3) The request for reconsideration must specify the findings or issues with which the accreditation organization disagrees and the reasons for the disagreement.

(4) A requestor may withdraw its request for reconsideration at any time before the issuance of a reconsideration determination.

(5) In response to a request for reconsideration, CMS provides the accreditation organization the opportunity for an informal hearing to be conducted by a hearing officer appointed by the Administrator of CMS and provide the accreditation organization the opportunity to present, in writing and in person, evidence or documentation to refute the determination to deny approval, or to withdraw or not renew deeming authority.

(6) CMS provides written notice of the time and place of the informal hearing at least 10 days before the scheduled date.

(7) The informal reconsideration hearing is open to CMS and the organization requesting the reconsideration, including authorized representatives; technical advisors (individuals with knowledge of the facts of the case or presenting interpretation of the facts); and legal counsel.

(i) The hearing is conducted by the hearing officer who receives testimony and documents related to the proposed action.

(ii) Testimony and other evidence may be accepted by the hearing officer even though it is inadmissible under the rules of court procedures.

(iii) The hearing officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

(8) Within 45 days of the close of the hearing, the hearing officer presents the findings and recommendations to the accreditation organization that requested the reconsideration.

(9) The written report of the hearing officer includes separate numbered findings of fact and the legal conclusions of the hearing officer. The hearing officer's decision is final.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 15, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 3, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–3982 Filed 4–24–06; 4:00 pm]

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Monday,
May 1, 2006

Part III

Environmental Protection Agency

40 CFR Part 80

Technical Amendments to the Highway and Nonroad Diesel Regulations; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2006–0224; FRL–8161–9]

RIN 2060–AN78

Technical Amendments to the Highway and Nonroad Diesel Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to correct, amend, and revise certain provisions of the Highway Diesel Rule, and the Nonroad Diesel Rule. This action corrects additional errors and omissions from the previous rules, and it makes minor changes to the regulations to assist entities with regulatory compliance. This action also makes technical amendments that resulted from discussions with various diesel stakeholders. These technical amendments will: provide a temporary increase in the sulfur testing tolerance, revise the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amend the alternative defense provisions to account for conductivity additives and red dye. This action is intended to help facilitate compliance with the diesel fuel regulations and ensure a smooth transition to ultra low sulfur diesel fuel.

DATES: This direct final rule is effective on June 30, 2006 without further notice, unless we receive adverse comments by May 31, 2006. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0224, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-Docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: EPA–HQ–OAR–2006–0224, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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–2006–0224. EPA's policy is that 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 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 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 1.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Tia Sutton, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood Dr., Ann Arbor MI 48105; telephone (734) 214–4018, fax (734) 214–4816, e-mail *sutton.tia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action will affect companies and persons that produce, import, distribute, or sell highway and/or nonroad diesel fuel. Affected Categories and entities include the following:

Category	NAICS code [a]	Examples of potentially affected entities
Industry	324110	Petroleum refiners.
Industry	422710	Diesel fuel marketers and distributors.
Industry	484220	Diesel fuel carriers.

[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 affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document?

1. *Docket.* EPA has established an official public docket for this action under Air Docket No. EPA–HQ–OAR–2006–0224. 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 restricted from disclosure by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

a. *http://www.epa.gov/docs/fedrgstr/EPA-AIR* (either select desired date or use Search features).

b. *http://www.epa.gov/otaq* (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

C. Why Is EPA Proposing a Direct Final Rule?

EPA is publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal for the provisions in this direct final rule if adverse comments are filed. If EPA receives adverse comment on one or more distinct amendment, paragraph, or section of this rulemaking, or receives a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We will address all public comments received in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of this rulemaking for which we do not receive adverse comment will become effective as indicated in the **DATES** section above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of this rule.

D. How and to Whom Do I Submit Comments?

You may submit comments on this direct final rule as described in this section. You should note that we are also publishing a notice of proposed rulemaking in the ''Proposed Rules'' section of this **Federal Register**, which matches the substance of this direct final rule. Your comments on this direct final rule will be considered to also be applicable to that notice of proposed rulemaking. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. 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.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM and in any other accompanying materials to ensure that you can be identified as the submitter of the comment. It is EPA's policy that we will not edit your comment, and any identifying or contact information provided will allow EPA to contact you if we cannot read your comment due to technical difficulties or need further information on the substance of your comment. If EPA cannot contact you in these circumstances, we may not be able to consider your comment. Contact information provided in the body of the comment will be included as part of the comment placed in the official public docket and made available in EPA's electronic public docket.

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 No. EPA–HQ–OAR–2006–0224. 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. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES** above. 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 two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0224.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. EPA–HQ–OAR–2006–0224. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID No. EPA–HQ–OAR–2006–0224.

II. Summary of Rule

The Highway Diesel rule, published on January 18, 2001 (66 FR 5002), is a comprehensive national program that will greatly reduce emissions from diesel engines by integrating engine and fuel controls as a system to gain the greatest air quality benefits. The Nonroad Diesel Rule was subsequently published on June 29, 2004 (69 FR 38958). The Nonroad Diesel Rule took a similar approach, covering nonroad diesel equipment and fuel to further the goal of decreasing harmful emissions. In 2005, we published two additional direct final rulemakings (70 FR 40889 was published on July 15, 2005 and 70 FR 70498 was published on November 22, 2005) to make technical amendments to those rules. We have chosen to publish a third action to correct additional errors and omissions from the previous rules, and to make minor changes to the regulations to assist entities in complying with our diesel fuel rules. In addition, discussions with stakeholders throughout the diesel fuel industry identified a need for additional changes to the regulations such as: (1) Providing a temporary increase in the sulfur

testing tolerance; (2) revising the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards; and, (3) amending the alternative defense provisions to account for conductivity additives and red dye. This action will make all of these changes and additions to further ensure compliance with EPA's diesel fuel regulations.

III. Final Rulemaking Changes to Sulfur Test Tolerance

This action adopts a temporary change to the adjustment factor associated with the testing tolerance for measurement of diesel fuel sulfur for ULSD. Section 80.580(d) specifies that an adjustment factor of negative two ppm shall be applied to the test results, to account for test variability for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1). The temporary change is to allow an adjustment factor of negative three ppm for the sulfur tolerance for a period of two years.

The approach being considered leaves intact the 2 ppm sulfur adjustment factor for addressing lab-to-lab test variability long term; reflecting the very positive results of our round robin testing program. It also makes no change to the 15 ppm fuel sulfur cap for in-use diesel fuel starting June 1, 2006 at the refinery, nor the fuel sulfur cap at the retail outlet. However, it would allow an additional 1 ppm (3 ppm total) testing tolerance for the first 2 years of the program; reflecting the results of our round robin testing program which indicated that not everyone was yet capable of meeting the 2 ppm requirement. This temporary change to the adjustment factor would further help to facilitate the transition to ULSD by eliminating concerns associated with the impact of test method variability on the sulfur level at the refinery gate during the initial implementation of the ULSD program. This ensures that fuel that is compliant with the 15 ppm sulfur requirement is not inappropriately deemed to be noncompliant simply because of the variability in the test. This specific change ensures that laboratories have the time necessary to obtain new instrumentation, tighten their internal quality assurance/quality control (QA/QC) procedures, and train their staff on these new instruments and procedures. It would also give them time to establish a track record on which they can base confidence in both their measurements and those of their customers and suppliers. At the same time, its temporary nature assures that no one will use it to relax their production targets.

With the Nonroad Diesel rule (69 FR 38958, June 29, 2004), EPA adopted a performance-based test method approach. For 15 ppm sulfur Nonroad, Locomotive, and Marine (NRLM) and Motor Vehicle (MV) diesel fuel, under the performance-based approach, any test method could be approved for use in a specific laboratory by meeting certain precision and accuracy criteria as specified in § 80.584. Qualification or approval is maintained as long as that laboratory follows the appropriate quality control procedures as specified in § 80.585(e).

We included a two ppm downstream adjustment to account for the anticipated reproducibility, or lab-to-lab variability, of the test methods that will be used to measure the sulfur content of ULSD. This would allow fuel that actually met the 15 ppm standard not to be inappropriately considered noncompliant by EPA. Parties could not measure above 15 ppm without taking on risk that due to test reproducibility EPA might consider the fuel to be noncompliant.

Subsequent to the Nonroad Diesel rule, concerns continued to be expressed based on testing by the American Society of Testing and Materials (ASTM) that actual reproducibility might be greater than the 2 ppm downstream adjustment. The concern was that refiners might have to reduce the sulfur level of their diesel fuel production to account for test reproducibility greater than 2 ppm. While acknowledging the ASTM test program results, we also highlighted several shortcomings of the ASTM program for the purpose of estimating what reproducibility might be once the ULSD program began. Consequently, we committed to conduct a round-robin test program with industry and to adjust the downstream test tolerance if necessary based on the result. This rulemaking follows up on that commitment.

The round robin testing program required participating laboratories to first qualify their measurement methods by meeting the accuracy and precision requirements of § 80.584 for each individual test method that it wanted to use on a lab-specific basis. The round robin testing program included ten fuel samples that were provided to the laboratories; five in July 2005 and five in August 2005. The laboratories were required to use two different calibration curves when measuring the fuel sulfur content, their in-house curve and a curve generated from National Institute of Standards and Technology (NIST) Standard Reference Materials (SRMs) provided by EPA. The test methods that were used in the round robin testing program were ASTM D 2622, ASTM D 3120, ASTM D 5453, ASTM D 7039, and a non-voluntary consensus standards body (VCSB) Energy Dispersive X-ray Fluorescence method. There were 129 laboratories that participated using 149 instruments.

Typically, laboratory calibrations for measurement of ULSD fuel are done by either using calibration standards that are prepared in the laboratory by preparing a gravimetric stock solution and then performing serial dilutions or by purchasing calibration standards from a variety of calibration standard suppliers. This provides for a plethora of calibration standards and can bias lab-to-lab variability. During our round robin test program, we wanted to account for this variability, so in addition to having the laboratories measure the blind fuel samples using their own in-house calibration curve, we asked them to measure the blind fuel samples using a calibration curve generated from four recently available NIST SRMs that were provided by EPA for the test program. The purpose here was to determine the contribution of calibration curve bias to reproducibility, or lab-to-lab variability, which can be determined when all of the labs are using identical, highly accurate, calibration standards. These SRMs are available to the general public for purchase at a reasonable price and there is a large supply. The results of the test program showed that for the most widely used method, D 5453 and the best performer, D 7039, calibration curve bias accounted for a 0.75 ppm increase in lab-to-lab variability on average when the fuel sulfur content is at or near 15 ppm.

The results led us to the conclusion that the 2 ppm adjustment factor is indeed appropriate. However the results also indicated that an additional 1 ppm on a temporary basis could be appropriate. For the newest test methods (ASTM D 5453 and ASTM D 7039) when laboratories used NIST standards coupled with appropriate test procedures, reproducibility was less than 2 ppm for 15 ppm sulfur in diesel fuel. The conclusions that we drew from the round robin testing program were that:

- Older methods struggled with meeting the reproducibility requirement.
- Newer test methods are fully capable.
- Qualification of the test laboratory is important to the ability of the

laboratories to validate their reproducibility.

• With any method, proper QA/QC procedures, including periodic use of calibration check standards are important.

The results of the round robin testing also indicated that some laboratories are still having difficulty. EPA believes that this is likely the result of using older test methods, improper staff training, older test equipment, inadequate calibration standards, and improper QA/QC. To the extent that laboratories were qualified prior to the start of the testing and the quality control practices were continued, there was a greater likelihood the testing facilities were able to meet the testing tolerance requirements. We continue to believe that with newer equipment coupled with best practices for quality control, laboratory-to-laboratory reproducibility can meet the 2 ppm compliance margin and thus lead to greater assurance that in-use compliance will not be a challenge.

The approach that EPA is finalizing today provides greater assurance that refineries do not need to expend the resources to produce even lower sulfur fuel to compensate for uncertainty associated with the test variability at the start of the program which will not exist after the transition period. By allowing a 3 ppm temporary compliance margin, laboratories downstream of the refinery will have greater assurance that their procedures are adequate without fear of compliance challenges. Without the appropriate adjustment factor to address test variability, refiners expressed concern that they would have had to lower the sulfur level of the diesel fuel they produced unnecessarily to account for greater test uncertainty. They also stated that this would cause them to operate their refineries in a way that might constrain fuel supply. The temporary nature of the modified adjustment factor focuses on the fact that EPA continues to believe that improvements in reproducibility are forthcoming. The two year adjustment factor increase allows time for the industry to transition to the improved test procedures and instrumentation while minimizing the potential for supply disruptions associated with the need to downgrade fuel that could have potentially been noncompliant based on test method variability. This should not lead to an increase in fuel sulfur levels above the 15 ppm cap at any point in the distribution system as parties would risk being found in noncompliance by EPA should they release fuel with a measured sulfur level greater than 15 ppm. The purpose of the downstream adjustment factor is simply to ensure that fuel actually meeting the 15 ppm cap is not rejected by pipelines or otherwise treated as noncompliant due to concerns with testing variability.

After the two-year period (through October 14, 2008) all entities responsible for measuring fuel sulfur levels and ensuring that the sulfur content of the fuel is at or below 15 ppm sulfur will have a maximum sulfur testing adjustment factor of negative two ppm. This should provide all ULSD refiners, distributors and marketers sufficient time to procure new instrumentation if necessary, improve their QA/QC procedures, and train personnel to improve their testing to less than the 2 ppm allowed.

IV. Amendments to the Designate and Track Requirements Regarding Non-Petroleum Diesel Fuel

Biodiesel blenders recently made us aware of several issues with respect to how biodiesel is treated within the context of the designate and track (D&T) provisions under EPA's diesel program. They stated that 100 percent biodiesel (B100) and high concentration biodiesel blends do not necessarily meet the specifications for either #1D or #2D diesel fuel, and requested that EPA amend the regulations to provide accurate designations for these fuels. Similar to the existing provisions for #1D 15 ppm diesel fuel, they stated that B100 and high concentration biodiesel blends designated as 15 ppm highway diesel fuel should be exempted from the anti-downgrading requirements. Finally, they stated that the regulations as currently written would compel numerous biodiesel blenders downstream of the terminal to comply with the D&T registration and reporting requirements. They related that this would represent a substantial unanticipated burden for these parties and questioned whether it was necessary to meet EPA's regulatory goals.

A. Background

Biodiesel is manufactured primarily for blending into petroleum-based diesel fuel. Biodiesel blends manufactured for use interchangeably with 100 percent petroleum-based diesel fuel typically contain up to 20 percent biodiesel (B20).[1] Most biodiesel has inherently very low sulfur content. Consequently, it is anticipated that to facilitate distribution of a single grade of B100 which can be blended into multiple distillate fuel grades (*e.g.* highway diesel, nonroad diesel, heating oil) most, if not all, B100 will be designated as 15 ppm diesel fuel by the manufacturer. As a result of the tax incentives made available for biodiesel blenders by the Jobs Act of 2004 and extended by the Energy Policy Act (EPAct) of 2005, the interest in blending biodiesel in growing. Biodiesel blenders are eligible for a tax credit for the volume of biodiesel that is blended into petroleum-based diesel for fuel use. The Internal Revenue Service (IRS) requires that to receive the tax credit, the biodiesel blend must contain at least one tenth of one percent petroleum based diesel fuel (referred to as B99.9).[2] To become eligible for this tax credit, upstream parties sometimes manufacture B99.9 for use downstream to produce finished biodiesel blends.

B100 and B99.9 meet the IRS definition of an ''excluded liquid'' and thus are not subject to federal fuel excise taxes.[3] At the point where an excluded liquid is blended with a sufficient quantity of petroleum-based diesel fuel so that the final fuel blend contains at least 4 percent normal paraffins, such liquid ceases to be an excluded liquid, and the volume of previously excluded liquid becomes subject to federal fuel excise taxes. Thus, parties downstream of the terminal where fuel taxes are normally assessed such as bulk plant operators, tank truck operators, centrally fueled fleets, and retail operators could take custody of B100 or B99.9 on which highway taxes have not yet been assessed for use in blending into petroleum-based diesel fuel. Under current EPA regulations, all parties that take custody of diesel fuel on which taxes have not been assessed would need to comply with the designate and track registration and reporting requirements.

B. Amendments Made by This Rule

To accommodate B100 and high concentration biodiesel blends that do not satisfy the specifications for either #1D or #2D diesel fuel, this rule amends the regulations to add a designation for non-petroleum based diesel fuel and high concentration blends of non-petroleum diesel fuel. Any diesel fuel that is composed of at least 80 percent non petroleum diesel fuel (such as biodiesel) can be designated as non-

[1] 2 percent biodiesel (B2) and 5 percent biodiesel (B5) are common biodiesel blends.

[2] Internal Revenue Bulletin 2005–35, August 29, 2005.

[3] 26 CFR 4081–1(b) states the an excluded liquid contains less than 4 percent normal paraffins.

petroleum (NP) diesel.[4] We have included 80 percent blends in the definition of NP diesel because we are aware that 20 percent petroleum based diesel is sometimes blended into B100 during winter to improve its cold temperature performance. B99.9 and B80 are used for the same purposes as B100, either as a finished fuel or for the later manufacture of biodiesel blends for use as finished fuel. Similar to #1D fuel, we agree that it is not appropriate to apply the anti-downgrading requirements for 15 ppm highway diesel fuel to NP diesel fuel since this would interfere with its intended purpose of NP diesel as a blend component into all grades of diesel fuel (including 500 ppm highway diesel fuel). Consequently, this rule amends the regulations to exempt fuel designated as NP diesel from the anti-downgrading requirements.

We agree that it is not necessary to include facilities downstream of the terminal in the D&T system if the only action that would cause them to be included is that they handle a tax-excluded liquid. The purpose of the D&T requirements is to maintain the integrity of the distillate sulfur requirements for petroleum refiners. Once highway taxes have been assessed on such fuels and red dye or marker is added (if required[5]), typically before the fuel leaves the terminal, there is no potential for inappropriate shifting from one pool to another.[6] For most, if not all, of the parties that take custody of an excluded liquid such as B100 or B99.9 downstream of the terminal, these are the only fuels that they handle on which highway diesel taxes have yet to be assessed. For such parties, EPA can rely on the presence or absence of red dye and marker to evaluate whether any inappropriate shifting has taken place.

This rule exempts parties from the D&T registration and reporting requirements if: (1) The only diesel fuel that the entity delivers or receives on which taxes have not been assessed pursuant to IRS code (26 CFR part 48) is an excluded liquid pursuant to IRS code 26 CFR 48.4081–1(b), and (2) the entity does not transfer such excluded liquid to a facility which delivers or receives other diesel fuel on which taxes have not been assessed. The second provision is necessary to ensure that all volumes reported under the D&T provisions can be accounted for when EPA audits compliance with these requirements. In most cases, this second provision will be moot since the parties for which this exemption is being crafted are biodiesel blenders and typically do not further distribute B100.

Table IV–1, below, contains a summary of the amendments to the D&T provisions made by this action to accomplish the goals outlined above. These amendments will reduce the compliance burden for a number of required parties while maintaining the environmental benefits of the program.

TABLE IV–1.—SUMMARY OF AMENDMENTS TO THE DESIGNATE AND TRACK REQUIREMENTS REGARDING NON-PETROLEUM DIESEL FUEL

Section	Description
80.2	Amended the definition of heating oil to reflect that it can contain NP diesel. Added a definition for NP diesel.
80.520	Amended the standards and dye requirements to reflect that diesel fuel can be designated as NP diesel.
80.590	Amended the product transfer document requirements to reflect that diesel fuel can be designated as NP diesel.
80.597	Amended the D&T provisions to exempt a facility from registration if: (1) The only diesel fuel that the entity delivers or receives on which taxes have not been assessed pursuant to IRS code (26 CFR part 48) is an excluded liquid pursuant to IRS code 26 CFR 4081–1(b), and (2) The entity does not transfer such excluded liquid to a facility which delivers or receives other diesel fuel on which taxes have not been assessed.
80.598	Amended the diesel fuel designation requirements so that diesel fuel can be designated as NP diesel.
80.599	Amended the manner in which compliance with the anti-downgrading requirement is evaluated to exempt diesel fuel designated as NP from the requirements.
80.600	Amended the recordkeeping requirements under the designate and track provisions to: (1) Reflect that diesel fuel can be designated as NP diesel, and (2) clarify that facilities that are exempt from the registration requirements under the D&T provisions (per the amendment to § 80.597) do not need to identify the EPA entity or facility registration number to which fuel composed entirely of an excluded liquid was distributed.
80.601	Amended the reporting requirements under the D&T provisions to clarify that facilities that are exempted from the registration requirements (per the amendments to § 80.597) are not subject to these reporting requirements.

V. Amendments to the Designate and Track Requirements Regarding California Diesel

California refiners and distributors of diesel fuel requested that EPA consider exempting diesel fuel that meets the State of California requirements for highway diesel fuel (known as California Air Resource Board diesel, or ''California diesel'') from the designate and track requirements under EPA's diesel program while such California diesel fuel is in the State of California. They stated that because the State of California will require that California diesel meet a 15 ppm sulfur specification by June 1, 2006, the D&T provisions to prevent the inappropriate shifting of higher sulfur diesel fuel into the California diesel pool are not needed for California diesel while it is in the State of California. It was stated that California diesel which enters the 49 states could be incorporated into the D&T system so as to maintain the integrity of the system. It was also requested that the D&T requirements be amended to accommodate cases where California diesel is shipped via pipeline to a terminal outside of California to be distributed by tank truck back into the State of California.

The State of California's diesel fuel program does not contain the temporary compliance option for highway diesel fuel, or the small refiner and credit provisions that exist under the federal program. At the time of its introduction, California diesel became mandatory for use in both highway vehicles and nonroad equipment. Beginning January 2007, the State of California requires that California diesel meeting a 15 ppm sulfur specification be used in intrastate locomotives and marine engines.

[4] It is also likely that non-petroleum diesel fuels other than biodiesel will not satisfy the specifications for #1D or #2D diesel fuel.

[5] Outside of the Northeast Mid-Atlantic Area, the marker solvent yellow 124 must be added to heating oil beginning June 1, 2007 and to locomotive and marine diesel fuel from June 1, 2010–May 31, 2012 before the fuel leaves the terminal.

[6] For example, from the nonroad diesel pool into the 500 ppm highway diesel pool during the highway program's temporary compliance option, or from the heating oil pool into the high sulfur NRLM pool while the NRLM program's small refiner and credit provisions remain effective.

Consequently, we agree that the concerns which led us to implement the D&T requirements do not exist with respect to California diesel while it is in the State of California. Therefore, this action amends the D&T regulations so that facilities which handle California diesel while it is within the State of California are not subject to the associated registration, volume balance, and reporting requirements.

Under this amendments, a pipeline that ships California diesel to a terminal outside of California will continue to be subject to all of the D&T requirements except for the volume balance requirements for highway diesel fuel. Such pipeline facilities will not need to identify the specific facilities from which they received the California diesel that enters the 49 states. The terminal within the 49 states that receives California diesel must redesignate the fuel as federal 15 ppm sulfur highway diesel fuel (ULSD) or segregate the California diesel fuel it receives for redistribution back into the State of California. Refiners and importers of diesel fuel in the State of California will continue to be subject to the federal sulfur testing requirements. This rule contains various amendments (listed below in table V–1) to ensure that the integrity of the D&T system is maintained.

Table V–1, below, contains a summary of the regulatory amendments made by this action to implement the approach outlined above. We expect that these amendments will reduce compliance burdens for California refiners and distributors while preserving the environmental benefits of the clean diesel program.

TABLE V–1.—SUMMARY OF AMENDMENTS TO THE DESIGNATE AND TRACK REQUIREMENTS REGARDING DIESEL FUEL THAT MEETS CALIFORNIA'S STANDARDS

Section	Description
80.597(c)(1)(iv)	Added to clarify that facilities that ship California diesel outside of California are required to register under the designate and track provisions.
80.598(b)(2)(iii), 80.598(b)(3)(iv)	Added new designation for California diesel fuel.
80.598(b)(9)(xvi)	Added new section which specifies that California diesel shipped outside of California must either be re-designated as 15 ppm MVNRLM of segregated for delivery back into California by tank truck.
80.599(b)(2), 80.599(e)(2)	Amended definitions of $MV15_I$ and $\#2MV15_I$ to include CA diesel received pursuant to new section 80.617(b)(1).
80.600(b)(1)(i)(E), 80.600(b)(1)(ii)(I)	Added to specify that records must be maintained regarding transfers of California diesel fuel out of the State of California under § 80.617(b).
80.600(n)	Added to clarify that records do not need to be maintained re the specific facilities to which taxed or dyed California diesel fuel (or taxed or dyed 15 ppm MVNRLM) is delivered.
80.601(a)(1)(i), 80.601(a)(2)(i)	Amended reporting requirements to include fuel designated as California diesel that is distributed outside of California.
80.616	Added exemption provisions for California diesel within the State of California.
80.617	Added provisions on how to handle California diesel distributed outside the State of California.

VI. Amendments to the Alternative Defense Provisions Regarding the Use of Conductivity Additives and Red Dye With a Sulfur Content That Exceeds 15 ppm

Conductivity Additives

EPA's diesel program provides for the use of additives with a sulfur content greater than 15 ppm in diesel fuel that is subject to the 15 ppm sulfur standard. Under such circumstances, the party that blends the additive is responsible for ensuring that the finished fuel is compliant with the 15 ppm sulfur standard. If a violation of the 15 ppm standard is discovered, EPA will require that all parties that had custody of the fuel provide affirmative defenses to presumptive liability to demonstrate that they did not cause or contribute to the violation. For blenders of additives with a sulfur content greater than 15 ppm, such affirmative defenses typically include a post-additization sulfur test on the fuel batch which shows that the finished diesel fuel is compliant with the 15 ppm sulfur standard. Certain diesel fuel additives are typically injected as the fuel is being delivered into a tank truck. The cost of post-additization sulfur testing could be significant under these circumstances and could discourage the injection of additives with a sulfur content that exceeds 15 ppm as the fuel is delivered into the tank truck. This might force more additization to take place upstream at the refiner when possible or in the terminal storage tank.

The final Highway and Nonroad Diesel rules projected that manufacturers of additives for use in diesel fuel subject to the 15 ppm sulfur standard would reformulate such additives where needed and practicable to have a sulfur content of less than 15 ppm. During the rulemaking process, we learned that important safety additives used to increase the electrical conductivity of diesel fuel can not currently be reformulated to have a sulfur content of less than 15 ppm. Conductivity (static dissipater) additives are often injected as the fuel is delivered into the tank truck although they are sometimes added to the terminal tank. They are typically not added at the refinery because of concerns that the additives might contaminate jet fuel during shipment by pipeline.

Concerns related to fires caused by the discharge of static electricity during the transfer of diesel fuel are primarily focused on instances where a tank truck that previously contained gasoline is subsequently loaded with diesel fuel.[7] Under such a circumstance, a flammable mixture of gasoline and air is likely to exist in the tank truck compartment.[8] Static electricity is generated during the transfer of diesel fuel into the tank truck compartment, which unless properly managed, can serve as an ignition source for this flammable mixture. The risk of fuel fires caused by static electric discharge can be mitigated by employing procedural safeguards and by the use of additives that increase the electrical conductivity of the fuel. Such procedural safeguards include: Bonding and grounding the tank truck to allow a safe pathway for the discharge of static electricity, controlling fuel flow rate and splashing to limit the generation of static electricity, and allowing sufficient time for the static charge that does accumulate to dissipate prior to completing the refueling procedure. Conductivity additives decrease the

[7] Such sequential loading is referred to as switch loading.

[8] Because the flash point of diesel fuel is much higher than that of gasoline, it is much less likely for a flammable diesel/air mixture to exist under typical ambient conditions.

extent to which a static charge can accumulate and the time needed for the charge that does accumulate to dissipate.

To facilitate the use of conductivity additives, the Nonroad Diesel final rule included alternative affirmative defense provisions for over 15 ppm sulfur conductivity additives that contribute no more than 0.05 ppm sulfur to the finished fuel blend (§ 80.614). Under these alternative affirmative defense provisions, additive blenders use a sulfur test prior to additization and volume accounting reconciliation (VAR) of the amount of additive injected into a volume of diesel over a compliance period to demonstrate that the sulfur contribution from the additive did not cause the finished fuel blend to exceed 15 ppm sulfur. We limited the use of these alternative defense provisions to conductivity additives that contribute no more than 0.05 ppm sulfur to the finished fuel blend for two reasons. First, the information available to us at the time indicated that the corresponding additive treatment rate would be adequate to meet the conductivity needs for all in-use fuels. Second, we wished to provide an upper limit on the potential sulfur contribution from such additives so that their sulfur content could not increase.

Certain fuel distributors recently related that to maintain safe operation during the transfer of 500 ppm diesel fuel they currently employ both procedural safeguards and add conductivity additives at a concentration that results in a sulfur contribution to the finished fuel in excess of the 0.05 ppm. They further stated that the limited number of conductivity tests on batches of early production 15 ppm diesel fuel indicates that the processes used to remove sulfur also tends to reduce the natural conductivity of the fuel. This could lead to increased concerns regarding protecting against fires caused by static discharge during the loading of petroleum tank trucks with ULSD. It was requested that to ensure a smooth transition to ULSD, EPA amend the criteria under which the alternative affirmative defense provisions can be used to allow the use of conductivity additives that contribute up to 0.4 ppm sulfur to the finished fuel blend. This corresponds to the maximum treatment rate recommended by a manufacturer of conductivity additives.

We believe that in order to facilitate the safe operation of tank truck loading facilities, it is appropriate to provide as much flexibility as possible for blenders of conductivity additives under the ULSD program. Thus, this rule provides that the alternative affirmative defense provisions may be used by blenders of conductivity additives that contribute no more than 0.4 ppm to the finished fuel. We expect that this change will allow the alternative defense provisions to be used under the most extreme circumstances, when treating diesel fuel batches during wintertime conditions (when static electricity concerns are heightened) that have extremely low conductivity and are also relatively unresponsive to the effects of conductivity improver additives. We continue to believe that in most cases the treatment rate of conductivity additive that will be needed will be much lower than that provided for under these amended alternative affirmative defense provisions.

Red Dye

The Internal Revenue Service (IRS) requires that red dye be added to nonroad diesel fuel prior to leaving the terminal to indicate its non-tax status. The D&T provisions under EPA's diesel program only apply up to the point where taxes are assessed as the fuel leaves the terminal. After this point, EPA's diesel program relies on the presence/absence of red dye to differentiate highway diesel fuel from nonroad diesel fuel. The success of both the IRS fuel excise tax program and EPA's clean diesel programs is dependant on the continued use of red dye.

Manufacturers of red dye recently related that their efforts to reformulate their additive to reduce the sulfur content below 15 ppm have not been fully successful and that it is currently unclear how this can be accomplished. Our review of the information which they provided indicates that reformulating red dye to meet a 15 ppm specification is currently not feasible.

Information provided by additive manufactures indicates that the use of red dye to meet IRS requirements should result in a contribution to the sulfur content of the finished fuel of no more than 0.04 ppm. Based on the above discussion, we believe that it is appropriate to allow the use of the alternative VAR-based affirmative defense provisions by blenders of red dye into diesel fuel subject to the 15 ppm sulfur standard provided that the use of red dye contributes no more than 0.04 ppm to the finished fuel blend. This rule amends the regulations to make this allowance.

Summary of the Amendments

The amendments made by this action regarding the use of the alternative defense provisions by blenders of greater than 15 ppm conductivity additives and red dye are summarized in the following table VI–1. For these alternative defense provisions to apply, it will continue to be necessary for the blender to have a sulfur test prior to additization which shows that the sulfur contribution from the additive will not cause the sulfur content of the finished fuel to exceed 15 ppm. Thus, these amendments will not have a negative impact on the environmental benefits of the ULSD program or on the sulfur sensitive diesel engine emissions control equipment on which these benefits depend. We intend to revisit the need for these alternative affirmative defenses should it become practical in the future to manufacture conductivity additives and/or red dye with a sulfur content of less than 15 ppm.

TABLE VI–1.—SUMMARY OF AMENDMENTS TO THE ALTERNATIVE DEFENSE PROVISIONS FOR CONDUCTIVITY ADDITIVES AND RED DYE

Section	Description
80.591	Amended product transfer document requirements in keeping with applicability of alternative defense provisions for red dye.
80.614	Amended alternative defense provisions so that they may be used by blenders of red dye that contributes no more than 0.04 ppm to the finished fuel and conductivity additives that contribute no more than 0.4 ppm to the finished fuel.

VII. Correction of Errors and Omissions From the Highway and Nonroad Diesel Regulations and Other Clarifications

Following the publication of the Highway and Nonroad Diesel rules, as well as the two subsequent rulemakings, we discovered additional errors and clarifications that we are addressing in this action. Some of these items are merely grammar corrections, typographical errors, and minor clarification edits. This action also includes more substantive amendments that we believe will assist regulated entities in compliance with the diesel sulfur rules. These include: The allowance for early motor vehicle diesel credits to be traded across Credit Trading Areas, the assignment of Puerto Rico and the U.S. Virgin Islands to CTA 1, the allowance of shorter statements on product transfer documents (with EPA approval), and the clarification that approved small refiners who have elected to use the ''gas-for-diesel'' small refiner option (§§ 80.553 and 80.554) may designate 15 ppm diesel fuel as motor vehicle diesel fuel or nonroad, locomotive, and marine diesel fuel.

The table below details the various clarifications and other corrections that are being made through this action:

Section	Description
Subpart I	Revised title to reflect the fact that the provisions of this subpart are applicable to motor vehicle, nonroad, locomotive and marine diesel fuel.
80.502(b)	Added definition to allow for the aggregation of refineries with truck loading terminals.
80.502(f)	Added to clarify that Alaska and Hawaii are in PADD V, and to assign the U.S. Virgin Islands and Puerto Rico to PADD VI.
80.527(c)	Amended to clarify that the anti-downgrading provisions begin October 15, 2006.
80527(c)(4), 80.527(e)(2)	Revised to clarify the anti-downgrading provisions as they apply to retailers and wholesale purchaser-consumers.
80.531(a)(5)(i)–(ii) and (v)	Amended to clarify that Puerto Rico and the U.S. Virgin Islands are assigned to CTA 1.
80.531(c)(5) and (d)(2), and 80.532	Amended to allow cross-CTA trading for early motor vehicle diesel fuel credits.
80.533 section heading, 80.533(d)(2) and (e).	The section heading was revised to better describe the purpose and objectives of this provision. Paragraphs were also amended to clarify that calculations of NRLM baselines should only be calculated using #2D distillates, to state that these provisions apply to ''produced or imported'' fuel, and for consistency with the revisions made to section 80.554(d).
80.535	Revised to state a refiner must submit its NRLM early credit generation intent letter at least 30 days prior to the date that it begins generating early credits.
80.551(f)	This provision was inadvertently omitted during the printing of a prior rulemaking.
80.553	Amended to state that at least 95 percent of the diesel fuel that a small refiner produces must be produced to meet the 15 ppm sulfur standard.
80.554(d)	Amended to better reflect the intent of the small refiner ''gas-for-diesel'' option.
80.570(e), 80.571(f), 80.572(f), 80.573(c), and 80.574(d).	Revised to state ''EPA'' instead of ''the Administrator.''
80.590(a)(7)	Amended to allow entities to use shorter statements regarding diesel fuel classifications on PTDs (with EPA approval).
80.590(i)	Added to cover the situation where some small amount of potentially off-spec ULSD, or ''interface ULSD'', may be transferred by a pipeline due to batch sequencing and pipeline batch cutting methods.
80.592(b)(7)–(b)(7)(i)	Amended to state ''compliance period'' rather than ''calendar year''.
80.592(f)	Added to state recordkeeping requirements for the situation where a refinery is aggregated with a truck loading terminal.
80.593	Amended to reflect the fact that this section is applicable to importers as well as refiners.
80.595	Revised the section heading to better describe the purpose and objectives of this provision.
80.597(c)(1) and (c)(2)	Revised to clarify that only entities delivering or receiving the fuels in 80.597(c)(1)(i)–(iii) must register.
80.598(a)(3)(iv)	Amended to clarify that small refiners who elect to produce NRLM to meet the 15 ppm standard in 2006 may designate 15 ppm fuel as MV or NRLM fuel beginning June 1, 2006 (as stated in § 80.554(d)).
80.598(b)(9)(iv) & (b)(9)(vii)(A)	Amended to state ''2006'' rather than ''2007''.
80.600	Various sections amended to address recordkeeping for the situation where a refinery is aggregated with a truck loading terminal.
80.601(a)(iv)–(v)	Amended to clarify volume balance requirements.
80.601(b)(4) and 80.601(f)	Added to state reporting requirements for the situation where a refinery is aggregated with a truck loading terminal.
80.602(g)	Added to address recordkeeping for the situation where a refinery is aggregated with a truck loading terminal.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

- 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This final rule simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate

and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. There are no new costs associated with this rule. Therefore, this final rule is not subject to the requirements of Executive Order 12866. A Final Regulatory Support Document was prepared in connection with the original regulations for the Highway Diesel Rule and the Nonroad Diesel Rule as promulgated on January 18, 2001 and June 29, 2004, respectively, and we have no reason to believe that our analyses in the original rulemakings were inadequate. The relevant analyses are available in the docket for the January 18, 2001 rulemaking (A–99–061) and the June 29, 2004 rulemaking (OAR–2003–0012 and A–2001–28) and at the following internet address: *http://www.epa.gov/cleandiesel.* The original action was submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden, as it simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations of the Highway Diesel Rule (66 FR 5002, January 18, 2001) and the Nonroad Diesel Rule (69 FR 38958, June 29, 2004) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0308 (EPA ICR #1718). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Analyses

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. 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's (SBA) size standards 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 final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose additional regulatory burden on small entities. This direct final rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye.

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 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 (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This direct final rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye.

Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, imposes substantial direct compliance costs, and is not required by statute. However, if 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 regulation, these restrictions do not apply. 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 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 express 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 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. This direct final rule simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. Although Section 6 of Executive Order 13132 did not apply to the Highway Diesel Rule (66 FR 5002) or the Nonroad Diesel Rule (69 FR 38958), EPA did consult with representatives of various State and local governments in developing these rules. For this direct final action, EPA consulted with representatives of the California Air Resources Board and the Western States Petroleum Association (WSPA) for the amendments made which will affect refiners and distributors in California.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications as specified in Executive Order 13175. This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.,* biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and 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 adverse effect on the supply, distribution or use of energy. This direct final rule simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as 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 direct final rule does not involve technical standards. This direct final rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as amended 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 Congress and the Comptroller General of the United States. We 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 before 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) and will become effective June 30, 2006.

IX. Statutory Provisions and Legal Requirements

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protections, Fuel additives, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: April 20, 2006.

Stephen L. Johnson,

Administrator.

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

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

■ 2. Section 80.2 is amended by revising paragraph (ccc) and adding paragraph (sss) to read as follows:

§ 80.2 Definitions.

* * * * *

(ccc) *Heating Oil* means any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, stationary diesel engines, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.

* * * * *

(sss) *Non-petroleum diesel (NP diesel)* means a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

■ 3. Subpart Heading I is revised to read as follows:

Subpart I—Motor Vehicle, Nonroad, Locomotive, and Marine Diesel Fuel

■ 4. Section 80.502 is amended by adding new paragraphs (b)(1)(iii), (d)(1), (d)(2) and (f), to read as follows:

§ 80.502 What definitions apply for purposes of this subpart?

* * * * *

(b) * * *

(1) * * *

(iii) *Situations where a refinery is aggregated with a truck loading terminal.*

(A) Where a refinery is aggregated with a truck loading terminal, diesel fuel or other product subject to the requirements of this subpart I produced by such refinery and distributed over the truck terminal rack must be included in refinery batches that may be based on shipments to a truck terminal rack tank or on the total volumes delivered to tanker trucks for a period not to exceed 1 calendar month per batch.

(B) Where a refinery is aggregated with a truck loading terminal, diesel fuel or other product subject to the requirements of this subpart I that were imported or produced by another refinery, and that are distributed through the refinery or truck terminal rack, must be treated as previously designated fuel for which the aggregated facility is responsible for all applicable balance and downgrade requirements under §§ 80.527, 80.598, 80.599 and related recordkeeping and reporting requirements like any other distributor downstream from the refiner or importer.

* * * * *

(d) * * *

(1) In the case of aggregated facilities consisting of a refinery and a truck loading terminal, a batch may be defined by one of the following methods:

(i) The sum of the deliveries from the truck loading terminal rack to trucks for periods not to exceed 1 month;

(ii) Each individual truck or truck compartment; or

(iii) For refineries with ''certification tanks'' where testing is performed and ''rack tanks'' that feed the truck loading terminal rack, each transfer from the certification tank to the rack tank. If this method of determining a batch is selected, it must be the sole method used and must be performed such that no double-counting or undercounting of volumes occurs.

(2) [*Reserved.*]

(f) *Definition of PADD.* For the purposes of this subpart only, the following definitions of PADDs apply:

(1) The following States are included in PADD I:

Connecticut
Delaware
District of Columbia
Florida
Georgia
Maine
Maryland
Massachusetts
New Hampshire
New Jersey
New York
North Carolina
Pennsylvania
Rhode Island
South Carolina
Vermont
Virginia
West Virginia

(2) The following States are included in PADD II:

Illinois
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma

South Dakota
Tennessee
Wisconsin

(3) The following States are included in PADD III:

Alabama
Arkansas
Louisiana
Mississippi
New Mexico
Texas

(4) The following States are included in PADD IV:

Colorado
Idaho
Montana
Utah
Wyoming

(5) The following States are included in PADD V:

Alaska
Arizona
California
Hawaii
Nevada
Oregon
Washington

(6) The following areas are included in PADD VI:

U.S. Virgin Islands
Commonwealth of Puerto Rico

■ 5. Section 80.520 is amended by revising paragraph (b)(2) introductory text to read as follows:

§ 80.520 What are the standards and dye requirements for motor vehicle diesel fuel?

* * * * *

(b) * * *

(2) Until June 1, 2010, any #1D or #2D distillate, or NP diesel fuel that does not show visible evidence of dye solvent red 164 shall be considered to be motor vehicle diesel fuel and subject to all the requirements of this subpart for motor vehicle diesel fuel, except for distillate fuel designated or classified as any of the following:

* * * * *

■ 6. Section 80.527 is amended by revising paragraph (c) introductory text, (c)(3), (c)(4), and (e)(2) to read as follows:

§ 80.527 Under what conditions may motor vehicle diesel fuel subject to the 15 ppm sulfur standard be downgraded to motor vehicle diesel fuel subject to the 500 ppm sulfur standard?

* * * * *

(c) *Downgrading limitation.* The provisions of this section apply beginning October 15, 2006.

* * * * *

(3) Compliance with the limitation of paragraph (c)(1) of this section applies separately for the compliance periods of October 15, 2006 through May 31, 2007; June 1, 2007 through June 30, 2008; July 1, 2008 through June 30, 2009; July 1, 2009 through May 31, 2010.

(4) Except as provided in paragraph (e) of this section, compliance with the limitation of paragraph (c)(1) of this section shall be as calculated under § 80.599(e).

* * * * *

(e) * * *

(2) A retailer or wholesale purchaser-consumer who does not sell, offer for sale, or dispense motor vehicle diesel fuel subject to the 15 ppm sulfur standard under § 80.520(a)(1) must comply with the downgrading limitations of paragraph (c) of this section, such that it may not downgrade a volume of motor vehicle diesel fuel, designated as subject to the 15 ppm sulfur standard, for more than 20% of the total volume of motor vehicle diesel fuel that it sells, offers for sale, or dispenses in any compliance period.

* * * * *

■ 7. Section 80.531 is amended by revising paragraphs (a)(5)(i), (a)(5)(ii), and (d)(2), and by adding paragraphs (a)(5)(v) and (c)(5) to read as follows:

§ 80.531 How are motor vehicle diesel fuel credits generated?

(a) * * *

(5) * * *

(i) PADDs I, II, III and IV, as described in § 80.502(f) except as provided in paragraph (a)(5)(iv) of this section. The CTAs shall be designated as CTA 1, 2, 3, and 4, respectively, and correspond to PADDs I, II, III, and IV, respectively;

(ii) CTA 5 shall correspond to PADD V, as described in § 80.502(f), except as provided in paragraphs (a)(5)(iii) and (iv) of this section;

* * * * *

(v) The U.S. territories specified in § 80.502(f)(6) shall be included in CTA 1.

* * * * *

(c) * * *

(5) *Credit transfers for early credits.* For early credits generated under § 80.531(c), credits may be used in any of the CTAs 1 through 5 that were generated in any of the CTAs 1 through 7 to achieve compliance with the volume limit in § 80.503(a)(3);

* * * * *

(d) * * *

(2) Credits generated under paragraphs (b) and (c) of this section shall be generated separately by CTA as defined in paragraph (a)(5) of this section and must be designated by CTA of generation, and by the refiner and refinery, or by importer and port of import, as applicable, except as provided under paragraph (c)(5) of this section.

* * * * *

■ 8. Section 80.532 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 80.532 How are motor vehicle diesel fuel credits used and transferred?

* * * * *

(d) * * *

(1) * * *

(i) The motor vehicle diesel fuel credits were generated in the same CTA as the CTA in which motor vehicle diesel fuel credits are used to achieve compliance, except as provided in § 80.531(c)(5);

* * * * *

■ 9. Section 80.533 is amended as follows:

■ a. By revising the section heading.
■ b. By adding a new paragraph (c)(2)(iii).
■ c. By revising paragraph (d)(2).
■ d. By adding introductory text to paragraph (e).
■ e. By revising paragraph (e)(1).
■ f. By revising paragraph (f).
■ g. By revising paragraph (g).
■ h. By revising paragraph (h).
■ i. By adding a new paragraph (i).

§ 80.533 How does a refiner or importer apply for a motor vehicle or non-highway baseline for the generation of NRLM credits or the use of the NRLM small refiner compliance options?

* * * * *

(c) * * *

(2) * * *

(iii) For purposes of a total diesel baseline volume for use in determining compliance with the provisions of § 80.554(d), the baseline volumes of motor vehicle diesel fuel produced during the calendar years beginning January 1, 1998 and 1999 (per §§ 80.595(a) and 80.596(a)); and the baseline volumes of non-highway diesel fuel produced during the three calendar years beginning January 1, 2003, 2004, and 2005. This shall be calculated as stated under paragraph (f) of this section.

* * * * *

(d) * * *

(2) Under paragraph (c)(2)(ii) of this section, B_{MV} equals the average annual volume of motor vehicle diesel fuel produced or imported during the period from January 1, 2006 through December 31, 2008.

* * * * *

(e) *Calculation of the Non-highway Baseline,* B_{NRLM}. For purposes of this paragraph (e), B_{MV} shall only include the average annual volume of #2D distillate fuel.

(1) Under paragraphs (c)(2)(i) and (c)(2)(iii) of this section, B_{NRLM} equals the average annual volume of all #2D distillate produced or imported from January 1, 2003 through December 31, 2005, less B_{MV} as determined in paragraph (d)(1) of this section.

* * * * *

(f) *Calculation of the Total Diesel Baseline*, B_{MVNRLM}. B_{MVNRLM} equals the sum of B_{MV} (as calculated under § 80.596) plus B_{NRLM} (as calculated under paragraph (e)(1) of this section).

(g)(1) Applications submitted under paragraphs (c)(2)(i) and (c)(2)(iii) of this section must be postmarked by February 28, 2006.

(2) Applications submitted under paragraph (c)(2)(ii) of this section must be postmarked by February 28, 2009.

(h)(1) For applications submitted under paragraphs (c)(2)(i) and (c)(2)(iii) of this section, EPA will notify refiners or importers by June 1, 2006 of approval of the baselines for each of the refiner's refineries or importer's import facilities or of any deficiencies in the refiner's or importer's application.

(2) For applications submitted under paragraph (c)(2)(ii) of this section, EPA will notify refiners or importers by June 1, 2009 regarding approval of the baselines for each of the refiner's refineries or importer's import facilities of any deficiencies in the refiner's or importer's application.

(i) If at any time the motor vehicle baseline or non-highway baseline submitted in accordance with the requirements of this section is determined to be incorrect, EPA will notify the refiner or importer of the corrected baseline and any compliance calculations made on the basis of that baseline will have to be adjusted retroactively.

■ 10. Section 80.535 is amended by revising paragraphs (a)(1)(i) and (c)(1)(i) to read as follows:

§ 80.535 How are NRLM diesel fuel credits generated?

(a) * * *

(1) * * *

(i) The refiner or importer notifies EPA of its intention to generate credits and the period during which it will generate credits. This notification must be received by EPA at least 30 calendar days prior to the date it begins generating credits under this section.

* * * * *

(c) * * *

(1) * * *

(i) The refiner or importer notifies EPA of its intention to generate credits and the period during which it will generate credits. This notification must be received by EPA at least 30 calendar days prior to the date it begins generating credits under this section.

* * * * *

■ 11. Section 80.551 is amended by adding paragraph (f) to read as follows:

§ 80. 551 How does a refiner obtain approval as a small refiner under this subpart?

* * * * *

(f) Approval of small refiner status for refiners who apply under § 80.550(e) will be based on all information submitted under paragraph (c) of this section, except as provided in § 80.550(e).

* * * * *

■ 12. Section 80.553 is amended by revising paragraphs (b) and (d) to read as follows:

§ 80.553 Under what conditions may the small refiner gasoline sulfur standards be extended for a small refiner of motor vehicle diesel fuel?

* * * * *

(b) As part of its application, the refiner must submit an application for a motor vehicle diesel fuel baseline in accordance with the provisions of §§ 80.595 and 80.596. The application must also include information, as provided in § 80.594, demonstrating that starting no later than June 1, 2006, 95 percent of the motor vehicle diesel fuel produced by the refiner will comply with the 15 ppm sulfur content standard under § 80.520(a)(1), and that the volume of motor vehicle diesel fuel produced will comply with the volume requirements of paragraph (e) of this section.

* * * * *

(d) Beginning June 1, 2006, and continuing through December 31, 2010, 95 percent of the motor vehicle diesel fuel produced by a refiner that has received an extension of its small refiner gasoline sulfur standards under this section must be accurately designated under § 80.598 as meeting the 15 ppm sulfur content standard under § 80.520(a)(1).

* * * * *

■ 13. Section 80.554 is amended by revising paragraphs (d)(1)(i), (d)(1)(ii), and (d)(3)(i) to read as follows:

§ 80.554 What compliance options are available to NRLM diesel fuel small refiners?

* * * * *

(d) * * *

(1) * * *

(i) From June 1, 2006 until the expiration of the refiner's small refiner gasoline sulfur standards (through December 31, 2007 or 2010) 95 percent of the total MVNRLM diesel fuel produced by the refiner must be accurately designated under § 80.598(a) as meeting the 15 ppm sulfur standard of § 80.510(b).

(ii) The refiner must produce MVNRLM diesel fuel each year or partial year under paragraph (d)(1)(i) of this section at a volume that is equal to or greater than 85 percent of B_{MVNRLM}, as defined in § 80.533, calculated on an annual basis.

* * * * *

(3)(i) If the refiner fails to produce the necessary volume of 15 ppm sulfur MVNRLM diesel fuel by June 1, 2006 and every year thereafter through the deadlines specified under paragraph (d)(1)(i) of this section, the refiner must report this in its annual report under § 80.604, and the adjustment of gasoline sulfur standards under paragraph (d)(2)(i) of this section will be considered void as of January 1, 2004.

* * * * *

■ 14. Section 80.570 is amended by revising paragraph (e) to read as follows:

§ 80.570 What labeling requirements apply to retailers and wholesale purchaser-consumers of diesel fuel beginning June 1, 2006?

* * * * *

(e) Alternative labels to those specified in paragraphs (a) through (c) of this section may be used as approved by EPA.

■ 15. Section 80.571 is amended by revising paragraph (f) to read as follows:

§ 80.571 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel or heating oil beginning June 1, 2007?

* * * * *

(f) Alternative labels to those specified in paragraphs (a) through (d) of this section may be used as approved by EPA.

■ 16. Section 80.572 is amended by revising paragraph (f) to read as follows:

§ 80.572 What labeling requirements apply to retailers and wholesale purchaser-consumers of NR and NRLM diesel fuel and heating oil beginning June 1, 2010?

* * * * *

(f) Alternative labels to those specified in paragraphs (a) through (d) of this section may be used as approved by EPA.

■ 17. Section 80.573 is amended by revising paragraph (c) to read as follows:

§ 80.573 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel and heating oil beginning June 1, 2012?

* * * * *

(c) Alternative labels to those specified in paragraph (a) of this section may be used as approved by EPA.

■ 18. Section 80.574 is amended by revising paragraph (d) to read as follows:

§ 80.574 What labeling requirements apply to retailers and wholesale purchaser-consumers of NRLM diesel fuel, or heating oil beginning June 1, 2014?

* * * * *

(d) Alternative labels to those specified in paragraphs (a) and (b) of this section may be used as approved by EPA.

■ 19. Section 80.580 is amended by revising paragraph (d) to read as follows:

§ 80.580 What are the sampling and testing methods for sulfur?

* * * * *

(d) *Adjustment factor for downstream test results.* (1) Except as specified in paragraph (d)(1)(i) of this section, an adjustment factor of negative two ppm sulfur shall be applied to the test results from any testing of motor vehicle diesel fuel or NRLM diesel fuel downstream of the refinery or import facility, to account for test variability, but only for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1).

(i) Prior to October 15, 2008 an adjustment factor of negative three ppm sulfur shall be applied to the test results, to account for test variability, but only for testing of motor vehicle diesel fuel or NRLM diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.510(b) or § 80.520(a)(1).

(ii) [*Reserved.*]

(2) In addition to the adjustment factor provided in paragraph (d)(1)(i) of this section, prior to September 1, 2006, an adjustment factor of negative 7 ppm shall be applied to the test results from any testing of motor vehicle diesel fuel downstream of the refinery or import facility, to facilitate the transition to ULSD fuel, but only for testing of motor vehicle diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.520(a)(1).

(3) In addition to the adjustment factor provided in paragraph (d)(1)(i) of this section, prior to October 15, 2006, an adjustment factor of negative 7 ppm shall be applied to the test results from any testing of motor vehicle diesel fuel at any retail outlet or wholesale purchaser-consumer facility, to facilitate the transition to ULSD fuel, but only for testing of motor vehicle diesel fuel identified as subject to the 15 ppm sulfur standard of § 80.520(a)(1).

* * * * *

■ 20. Section 80.581 is amended by revising paragraph (c)(1) to read as follows:

§ 80.581 What are the batch testing and sample retention requirements for motor vehicle and NRLM diesel fuel?

* * * * *

(c)(1) Any refiner who produces motor vehicle or NRLM diesel fuel using computer-controlled in-line blending equipment, including the use of an on-line analyzer test method that is approved under the provisions of § 80.580, and who, subsequent to the production of the diesel fuel batch tests a composited sample of the batch under the provisions of § 80.580 for purposes of designation and reporting, is exempt from the requirement of paragraph (b) of this section to obtain the test result required under this section prior to the diesel fuel leaving the refinery, provided that the refiner obtains approval from EPA. The requirement of this paragraph (c)(1) that the in-line blending equipment must include an on-line analyzer test method that is approved under the provisions of § 80.580 is effective beginning June 1, 2006.

* * * * *

■ 21. Section 80.590 is amended by revising paragraphs (a)(7) introductory text and (a)(7)(i), and by adding paragraph (i) to read as follows:

§ 80.590 What are the product transfer document requirements for motor vehicle diesel fuel, NRLM diesel fuel, heating oil and other distillates?

(a) * * *

(7) For transfers of title or custody from one facility to another in the distribution system where diesel fuel or distillates are taxed, dyed or marked, and for any subsequent transfers (except when such fuel is dispensed into motor vehicles or nonroad, locomotive, or marine equipment), an accurate statement on the product transfer document of the applicable fuel uses and classifications, as follows (however, in instances where space is constrained, substantially similar language may be used following approval from EPA):

(i) *Undyed 15 ppm sulfur diesel fuel.* For the period from June 1, 2006 and beyond, ''15 ppm sulfur (maximum) Undyed Ultra-Low Sulfur Diesel Fuel. For use in all diesel vehicles and engines.'' From June 1, 2006 through May 31, 2010, the product transfer document must also state whether the diesel fuel is #1D or #2D, or NP diesel.

* * * * *

(i) *Pipeline Ticketing.* For the case where a pipeline delivers a batch of ULSD to another facility that contains slight amounts of another type of fuel from a preceding or following batch, a clear statement must be included on the PTD denoting this. When this occurs, the receiving facility must handle the fuel appropriately (*e.g.,* redesignate or downgrade any amount of fuel in that batch that does not meet the applicable sulfur standard), in accordance with the provisions of §§ 80.527 and 80.599.

■ 22. Section 80.591 is amended by revising paragraphs (b)(3), (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) to read as follows:

§ 80.591 What are the product transfer document requirements for additives to be used in diesel fuel?

* * * * *

(b) * * *

(3) If the additive package contains a static dissipater additive and/or red dye having a sulfur content greater than 15 ppm, a statement must be included which accurately describes the contents of the additive package pursuant to one of the following choices:

(i) ''This diesel fuel additive contains a static dissipater additive having a sulfur content greater than 15 ppm.''

(ii) ''This diesel fuel additive contains red dye having a sulfur content greater than 15 ppm.''

(iii) ''This diesel fuel additive contains a static dissipater additive and red dye having a sulfur content greater than 15 ppm.''

(4) * * *

(i) The additive package's maximum sulfur concentration.

(ii) The maximum recommended concentration in volume percent for use of the additive package in diesel fuel.

(iii) The contribution to the sulfur level of the fuel, in ppm, that would result if the additive package is used at the maximum recommended concentration.

* * * * *

■ 23. Section 80.592 is amended by adding a new paragraph (f) to read as follows:

§ 80.592 What records must be kept by entities in the motor vehicle diesel fuel and diesel fuel additive distribution systems?

* * * * *

(f) *Additional records to be kept by aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the records required by paragraph (a) of this section, such aggregated facilities must also keep the following records beginning June 1, 2006:

(1) The following information for each batch of motor vehicle diesel fuel

produced by the refinery and sent over the aggregated facility's truck rack:

(i) The batch volume;

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1);

(iii) The date of receipt or import;

(iv) A record designating the batch as motor vehicle diesel fuel meeting the 500 ppm sulfur standard or as motor vehicle diesel fuel meeting the 15 ppm sulfur standard; and,

(v) A record indicating the volumes that were either taxed, dyed, or dyed and marked.

(2) Volume reports for all motor vehicle diesel fuel from external sources (*i.e.,* from another refiner or importer), as described in § 80.601(f)(2), sent over the aggregated facility's truck rack.

■ 24. Section 80.595 is amended by revising the section heading to read as follows:

§ 80.595 How does a small or GPA refiner apply for a motor vehicle diesel fuel volume baseline for the purpose of extending their gasoline sulfur standards?

* * * * *

■ 25. Section 80.597 is amended by revising paragraphs (c)(1) introductory text, and (c)(2) introductory text, and adding paragraphs (c)(1)(iv) and (c)(5) to read as follows:

§ 80.597 What are the registration requirements?

* * * * *

(c) *Entity registration.* (1) Except as prescribed in paragraph (c)(5) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2006 through May 31, 2010 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section:

* * * * *

(iv) Fuel designated as California Diesel fuel under § 80.598 on which taxes have not been assessed and red dye has not been added (if required) pursuant to IRS code (26 CFR part 48) and that is delivered by pipeline to a terminal outside of the State of California pursuant to the provisions of § 80.617(b).

(2) Except as prescribed in paragraph (c)(5) of this section, each entity as defined in § 80.502 that intends to deliver or receive custody of any of the following fuels from June 1, 2007 through May 31, 2014 must register with EPA by December 31, 2005 or six months prior to commencement of producing, importing, or distributing any distillate listed in paragraph (c)(1) of this section:

* * * * *

(5) *Exceptions for Excluded Liquids.* An entity that would otherwise be required to register pursuant to the requirements of paragraphs (c)(1) and (c)(2) of this section is exempted from the registration requirements under this section provided that:

(i) The only diesel fuel or heating oil that the entity delivers or receives on which taxes have not been assessed or which is not received dyed pursuant to Internal Revenue Service (IRS) code 26 CFR part 48 is an excluded liquid as defined pursuant to IRS code 26 CFR 4081–1(b).

(ii) The entity does not transfer the excluded liquid to a facility which delivers or receives diesel fuel other than an excluded liquid on which taxes have not been assessed pursuant to IRS code (26 CFR part 48).

* * * * *

■ 26. Section 80.598 is amended as follows:

■ a. By adding paragraph (a)(2)(v)(C).

■ b. By revising paragraph (a)(3)(iv).

■ c. By revising paragraph (a)(3)(vi).

■ d. By adding paragraphs (b)(2)(iii) and (b)(2)(iv).

■ e. By adding paragraphs (b)(3)(iv) and (b)(3)(v).

■ f. By adding paragraph (b)(4)(iv).

■ g. By adding paragraph (b)(9)(xvi).

§ 80.598 What are the designation requirements for refiners, importers, and distributors?

(a) * * *

(2) * * *

(v) * * *

(C) NP diesel (NP).

(3) * * *

(iv) Prior to June 1, 2009 all 15 ppm sulfur MVNRLM diesel fuel must be designated as motor vehicle diesel fuel. A refiner that has been approved as a NRLM diesel fuel small refiner under § 80.551(g) and has elected to use the compliance option specified under § 80.554(d) may also designate 15 ppm sulfur MVNRLM fuel as NRLM diesel fuel beginning June 1, 2006.

* * * * *

(vi) Beginning June 1, 2014, any distillate fuel having a sulfur content greater than 15 ppm may not be designated as MVNRLM diesel fuel.

(b) * * *

(2) * * *

(iii) Fuel that meets the requirements specified in § 80.616 which is transferred by a pipeline facility to a terminal facility outside of the State of California pursuant to § 80.617(b) may be designated as California diesel fuel. Such fuel must subsequently be redesignated by the receiving terminal as either #1D or #2D 15 ppm motor vehicle diesel fuel, or segregated for delivery by tank truck to a retail or wholesale purchaser consumer facility inside the State of California pursuant to § 80.617(b)(2).

(iv) NP 15 ppm sulfur motor vehicle diesel fuel.

(3) * * *

(iv) Fuel that meets the requirements specified in § 80.616 that is transferred by a pipeline facility to a terminal facility outside of the State of California pursuant to § 80.617(b) may be designated as California diesel fuel. Such fuel must either be redesignated by the receiving terminal as either #1D or #2D 15 ppm motor vehicle diesel fuel as prescribed in paragraph (b)(9)(xvi) of this section, or segregated for delivery by tank truck to a retail or wholesale purchaser consumer facility inside the State of California pursuant to § 80.617(b)(2).

(v) NP 15 ppm sulfur motor vehicle diesel fuel.

(4) * * *

(iv) NP 500 ppm sulfur motor vehicle diesel fuel.

* * * * *

(9) * * *

(xvi) Fuel designated as California diesel fuel under paragraph (b)(3)(iv) of this section that is received by a terminal facility pursuant to the provisions of § 80.617(b)(1) must be redesignated as either #1D or #2D 15 ppm motor vehicle diesel fuel as prescribed in paragraph (b)(9)(xvi) of this section, or segregated for delivery by tank truck to a retail or wholesale purchaser consumer facility inside the State of California pursuant to § 80.617(b)(2).

* * * * *

■ 27. Section 80.599 is amended as follows:

■ a. By revising paragraph (b)(2).

■ b. By revising paragraph (e)(2).

■ c. By revising paragraph (e)(4).

■ d. By revising paragraph (e)(5).

■ e. By adding a new paragraph (h).

§ 80.599 How do I calculate volume balances for designation purposes?

* * * * *

(b) * * *

(2) Calculate the motor vehicle diesel fuel received, as follows:

$$MV_I = MV15_I + MV500_I$$

Where:

$MV15_I$ = the total volume of all the batches of fuel designated as 15 ppm sulfur motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced by or imported into

the facility shall also be included in this volume. Any untaxed and undyed California diesel fuel received by a terminal pursuant to § 80.617 (b)(1) shall be included in this volume.

$MV500_I$ = the total volume of all batches of fuel designated as 500 ppm sulfur motor vehicle diesel fuel received for the compliance period. Any motor vehicle diesel fuel produced by or imported into the facility shall also be included in this volume.

* * * * *

(e) * * *

(2) The volume of #2D 15 ppm sulfur motor vehicle delivered must meet the following requirement:

$$(\#2MV15_O + \#2MV15_{INVCHG}) \geq 0.8 * \#2MV15_I$$

Where:

$\#2MV15_O$ = the total volume of fuel delivered during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel.

$\#2MV15_{INVCHG}$ = the total volume of diesel fuel designated as #2D 15 ppm sulfur motor vehicle diesel fuel in inventory at the end of the compliance period minus the total volume of #2D 15 ppm sulfur motor vehicle diesel fuel in inventory at the beginning of the compliance period, and accounting for any corrections in inventory due to volume swell or shrinkage, difference in measurement calibration between receiving and delivering meters, and similar matters, where corrections that increase inventory are defined as positive.

$\#2MV15_I$ = the total volume of fuel received during the compliance period that is designated as #2D 15 ppm sulfur motor vehicle diesel fuel. Any untaxed and undyed California diesel fuel received by a terminal pursuant to § 80.617(b)(1) shall be included in this volume.

* * * * *

(4) The following calculation may be used to account for wintertime blending of kerosene and the blending of non-petroleum diesel:

$$\#2MV500_O < = \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * (\#1MV15_I + \#2MV15_I + NPMV15_I)$$

Where:

$\#1MV15_I$ the total volume of fuel received during the compliance period that is designated as #1D 15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$NPMV15_I$ is the total volume of fuel received during the compliance period that is designated as NP15 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$\#1MV15_P$ = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #1D 15 ppm sulfur motor vehicle diesel fuel when it was delivered.

(5) The following calculation may be used to account for wintertime blending of kerosene, the blending of non-petroleum diesel, and/or changes in the facility's volume balance of motor vehicle diesel fuel resulting from a temporary shift of 500 ppm sulfur NRLM diesel fuel to 500 ppm sulfur motor vehicle diesel fuel during the compliance period:

$$\#2MV500_O < \#2MV500_I + \#2MV500_P - \#2MV500_{INVCHG} + 0.2 * \#2MV15_I + \#1MV15_B + \#2NRLM500_S + NP_B$$

Where:

$\#1MV15_B$ = the total volume of fuel received during the compliance period that is designated as #1D 15 ppm sulfur motor vehicle diesel fuel and that the facility can demonstrate they blended into #2D 500 ppm sulfur motor vehicle diesel fuel. Any motor vehicle diesel fuel produced by or imported into the facility shall not be included in this volume.

$\#2MV500_P$ = the total volume of fuel produced by or imported into the facility during the compliance period that was designated as #2MV 500 ppm sulfur motor vehicle diesel fuel when it was delivered.

$\#2NRLM500_S$ = the total volume of #2D 500 ppm sulfur NRLM diesel fuel that the facility can demonstrate they redesignated as #2D 500 ppm sulfur motor vehicle diesel fuel during the compliance period.

NP_B = the total volume of fuel received during the compliance period that is designated as NP15 ppm sulfur motor vehicle diesel fuel, and/or NP500 ppm sulfur motor vehicle diesel fuel which the facility can demonstrate they blended into #2D 500 ppm sulfur motor vehicle diesel fuel.

* * * * *

(h) *Additional requirements for aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the volume balance requirements required by paragraphs (a) through (g) of this section, aggregated facilities consisting of a refinery and a truck loading terminal are responsible for balance calculations on the volume difference between the total volume of diesel fuel sold over the truck loading terminal rack and the production volume from the batch reports. Mathematically, the difference will be the volume of fuel received from external sources and passed through to another facility.

■ 28. Section 80.600 is amended as follows:

■ a. By revising paragraphs (a)(1)(v) and (a)(1)(vi).

■ b. By adding new paragraphs (a)(1)(vii), (a)(1)(viii), and (a)(1)(ix).

■ c. By revising paragraphs (a)(3)(ii) and (a)(3)(iii).

■ d. By adding a new paragraph (a)(3)(iv).

■ e. By revising paragraphs (a)(4)(i) and (a)(4)(ii).

■ f. By adding a new paragraph (a)(4)(iii).

■ g. By revising paragraph (b)(1)(i)(D).

■ h. By adding new paragraphs (b)(1)(i)(E), (b)(1)(i)(F), (b)(1)(i)(G), and (b)(1)(i)(H).

■ i. By revising paragraphs (b)(1)(ii)(G) and (b)(1)(ii)(H).

■ j. By adding new paragraphs (b)(1)(ii)(I), (b)(1)(ii)(J), (b)(1)(ii)(K), and (b)(1)(ii)(L).

■ k. By revising paragraphs (b)(1)(iii)(B) and (b)(1)(iii)(C).

■ l. By adding a new paragraph (b)(1)(iii)(D).

■ m. By revising paragraphs (b)(1)(iv)(A) and (b)(1)(iv)(B).

■ n. By adding a new paragraph (b)(1)(iv)(C).

■ o. By revising paragraphs (b)(1)(v)(A) and (b)(1)(v)(B).

■ p. By adding a new paragraph (b)(1)(v)(C).

■ q. By revising paragraphs (b)(1)(vi)(A) and (b)(1)(vi)(B).

■ r. By adding a new paragraph (b)(1)(vi)(C).

■ s. By revising paragraphs (b)(1)(vii)(B) and (b)(1)(vii)(C).

■ t. By adding a new paragraph (b)(1)(vii)(D).

■ u. By revising paragraphs (b)(1)(viii)(A) and (b)(1)(viii)(B).

■ v. By adding a new paragraph (b)(1)(viii)(C).

■ w. By adding new paragraphs (n) and (o).

§ 80.600 What records must be kept for purposes of the designate and track provisions?

(a) * * *

(1) * * *

(v) #2D 500 ppm sulfur motor vehicle diesel fuel;

(vi) 500 ppm sulfur NRLM diesel fuel;

(vii) NP 15 ppm sulfur motor vehicle diesel fuel;

(viii) NP 500 ppm sulfur motor vehicle diesel fuel; or,

(ix) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(3) * * *

(ii) 500 ppm sulfur LM diesel fuel;

(iii) Heating oil; or

(iv) Exempt distillate fuels such as fuels that are covered by a national

security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(4) * * *

(i) 500 ppm sulfur NRLM diesel fuel;

(ii) Heating oil; or

(iii) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) #2D 500 ppm sulfur motor vehicle diesel fuel;

(E) California diesel fuel as defined in § 80.616 which is transferred out of the State of California pursuant to the provisions of § 80.617(b);

(F) NP 15 ppm sulfur motor vehicle diesel fuel;

(G) NP 500 ppm sulfur motor vehicle diesel fuel; or

(H) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(ii) * * *

(G) High sulfur NRLM diesel fuel;

(H) Heating oil;

(I) California diesel fuel as defined in § 80.616 which is transferred out of the State of California pursuant to the provisions of § 80.617(b);

(J) NP 15 ppm sulfur motor vehicle diesel fuel;

(K) NP 500 ppm sulfur motor vehicle diesel fuel; or

(L) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(iii) * * *

(B) 500 ppm sulfur LM diesel fuel;

(C) Heating oil; or

(D) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(iv) * * *

(A) 500 ppm sulfur NRLM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(v) * * *

(A) 500 ppm sulfur LM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(vi) * * *

(A) High sulfur NRLM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(vii) * * *

(B) 500 ppm sulfur LM diesel fuel;

(C) Heating oil; or

(D) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

(viii) * * *

(A) 500 ppm sulfur NRLM diesel fuel;

(B) Heating oil; or

(C) Exempt distillate fuels such as fuels that are covered by a national security exemption under § 80.606, fuels that are used for purposes of research and development pursuant to § 80.607, and fuels used in the U.S. Territories pursuant to § 80.608 (including additional identifying information).

* * * * *

(n) Notwithstanding the provisions of paragraphs (b)(2) and (b)(3) of this section, for batches of 15 ppm sulfur motor vehicle diesel fuel or California diesel fuel under § 80.617(b) on which taxes have been paid per Section 4082 of the Internal Revenue Code (26 U.S.C. 4082), and 15 ppm sulfur NRLM diesel fuel or California diesel fuel under § 80.617(b) into which red dye has been added per Section 4082 of the Internal Revenue Code (26 U.S.C. 4082), records are not required to be maintained separately for each entity or facility to whom fuel was delivered.

(o) In addition to the requirements of §§ 80.592 and 80.602, the following recordkeeping requirements shall apply to aggregated facilities consisting of a refinery and truck loading terminal:

(1) Any aggregated facility consisting of a refinery and truck loading terminal shall maintain records of the following information for each batch of distillate fuel produced by the refinery and sent over the aggregated facility's truck loading terminal rack:

(i) The batch volume;

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1);

(iii) The date of production;

(iv) A record designating the batch as distillate fuel meeting either the 500 ppm or 15 ppm sulfur standard; and,

(v) A record indicating the volumes that were either taxed, dyed, or dyed and marked.

(2) Volume reports for all distillate fuel from external sources (*i.e.*, from another refiner or importer), as described in § 80.601(f)(2), sent over the aggregated facility's truck rack.

■ 29. Section 80.601 is amended as follows:

■ a. By revising paragraph (a) introductory text.

■ b. By revising paragraph (a)(1)(i).

■ c. By revising paragraph (a)(2)(i).

■ d. By revising paragraphs (a)(4)(v) and (a)(4)(vi).

■ e. By revising paragraph (b) introductory text.

■ f. By adding a new paragraph (b)(4).

■ g. By adding a new paragraph (f).

§ 80.601 What are the reporting requirements for purposes of the designate and track provisions?

(a) *Quarterly compliance period reports.* Beginning February 28, 2007 and continuing through August 31, 2010, each entity required to register under § 80.597 and to maintain records under § 80.600 must report the following information separately for each of its facilities to the Administrator as specified in paragraph (d)(1) of this section except as provided in paragraph (e) of this section.

(1) * * *

(i) Beginning with the first compliance period and continuing up to and including the compliance period that starts April 1, 2007, fuel designated as 15 ppm or 500 ppm motor vehicle diesel fuel, or California diesel fuel as defined in § 80.616 which is distributed outside the State of California pursuant to § 80.617(b).

* * * * *

(2) * * *

(i) Beginning with the first compliance period and continuing up to and including the compliance period that starts April 1, 2007, fuel designated as 15 ppm or 500 ppm motor vehicle diesel fuel, or California diesel fuel as defined in § 80.616 which is distributed outside the State of California pursuant to § 80.617(b).

* * * * *

(4) * * *

(v) The volume balance under §§ 80.599(b)(4) and 80.598(b)(9)(vi).

(vi) Beginning with the compliance period starting June 1, 2007, the volume balance under §§ 80.599(c)(2) and 80.598(b)(9)(viii)(A).

(b) *Annual reports.* Beginning August 31, 2007, all entities required to register under § 80.597 and to maintain records for batches of fuel under § 80.600 must report the following information separately for each of its facilities to the Administrator on an annual basis, as specified in paragraph (d)(2) of this section except as provided in paragraph (e) of this section.

* * * * *

(4) In the case of aggregated facilities consisting of a refinery and truck loading terminal, the results of annual compliance calculations under § 80.598 for any distillate fuel received from an external source on which taxes have not been assessed and is not dyed and/or marked that the refinery will be handing off to another party, rather than selling over the truck loading terminal rack.

* * * * *

(f) *Additional requirements for aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the reporting requirements listed by paragraphs (a) through (e) of this section, as applicable, such aggregated facilities are also subject to the following requirements:

(1) *Batch reports.* Reports containing the requirements detailed in §§ 80.592(f) and 80.600(m), must be submitted for all distillate produced by the refinery and sent over the truck loading terminal rack.

(2) *Quarterly volume reports.* Reports detailing the quarterly totals of all designations, including whether the fuel was taxed or contained red dye (or red dye and the yellow marker), that left the truck loading terminal rack must be submitted for all distillate received from an external source or produced by the refinery.

(3) *Quarterly hand-off reports.*

(i) Reports detailing the quarterly totals of all designations of fuel received from external refiner/importer sources, if any.

(ii) Reports detailing the quarterly totals of all undesignated fuel received from external refiner/importer sources that entered the designate and track system.

■ 30. Section 80.602 is amended by adding a new paragraph (g) to read as follows:

§ 80.602 What records must be kept by entities in the NRLM diesel fuel and diesel fuel additive production, importation, and distribution systems?

* * * * *

(g) *Additional records to be kept by aggregated facilities consisting of a refinery and a truck loading terminal.* In addition to the applicable records required by paragraphs (a) through (f) of this section, such aggregated facilities must also keep the following records:

(1) The following information for each batch of motor vehicle diesel fuel produced by the refinery and sent over the aggregated facility's truck rack:

(i) The batch volume;

(ii) The batch number, assigned under the batch numbering procedures under §§ 80.65(d)(3) and 80.502(d)(1);

(iii) The date of production;

(iv) A record designating the batch as one of the following:

(A) NRLM diesel fuel, NR diesel fuel, LM diesel fuel, or heating oil, as applicable.

(B) Meeting the 500 ppm sulfur standard of § 80.510(a) or the 15 ppm sulfur standard of § 80.510(b) and (c) or other applicable standard.

(C) Dyed or undyed with visible evidence of solvent red 164.

(D) Marked or unmarked with solvent yellow 124.

(2) Hand-off reports for all distillate fuel from external sources (*i.e.*, from another refiner or importer), as described in § 80.601(f)(2).

■ 31. Section 80.614 is amended as follows:

■ a. By revising the section heading.
■ b. By revising the introductory text.
■ c. By revising paragraph (a).
■ d. By revising paragraph (b).
■ e. By revising paragraph (d).
■ f. By revising paragraph (e).
■ g. By revising paragraphs (f)(1) introductory text and (f)(1)(i).
■ h. By revising paragraph (f)(1)(ii).
■ i. By revising paragraphs (f)(1)(iii), (f)(1)(iv), (f)(1)(v), (f)(1)(vi), (f)(1)(vii) introductory text, (f)(1)(vii)(D), and (f)(1)(iii).
■ j. By revising paragraphs (f)(2) introductory text and (f)(2)(i).
■ k. By revising paragraphs (f)(2)(iii), (f)(2)(iv), (f)(2)(vi), and (f)(2)(vii).
■ l. By revising paragraphs (f)(5) and (f)(6)(i), (f)(6)(ii), (f)(6)(iii), and (f)(6)(iv).
■ m. By revising paragraphs (f)(7) introductory text and (f)(7)(i), (f)(7)(ii), and (f)(7)(iii).

§ 80.614 What are the alternative defense requirements in lieu of § 80.613(a)(1)(vi)?

Any person who blends a MVNRLM diesel fuel additive package into MVNRLM diesel fuel subject to the 15 ppm sulfur standards of § 80.510(b) or (c) or § 80.520(a) which contains a static dissipater additive that has a sulfur content greater than 15 ppm but whose contribution to the sulfur content of the MVNRLM diesel fuel is less than 0.4 ppm at its maximum recommended concentration, and/or red dye that has a sulfur content greater than 15 ppm but whose contribution to the sulfur content of the MVNRLM diesel fuel is less than 0.04 ppm at its maximum recommended concentration, and which contains no other additives with a sulfur content greater than 15 ppm must establish all the following in order to use this section as an alternative to the defense element under § 80.613(a)(1)(vi):

(a)(1) The blender of the additive package has a sulfur content test result for the MVNRLM diesel fuel prior to blending of the additive package that indicates that the additive package, when added, will not cause the MVNRLM diesel fuel sulfur content to exceed 15 ppm sulfur.

(2) In cases where the storage tank that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, the blender of the additive package must have sulfur test results on each batch of MVNRLM diesel fuel that was added to the storage tank during the current and previous volumetric accounting reconciliation (VAR) periods, which indicates that the additive package, when added to the component MVNRLM diesel fuel batch in the storage tank with the highest sulfur level would not cause that component batch to exceed 15 ppm sulfur.

(b) The VAR standard is attained as determined under the provisions of this section. The VAR reconciliation standard is attained when the actual concentration of the additive package used per the VAR formula record under paragraph (f) of this section is less than the concentration that would have caused any batch of MVNRLM diesel fuel to exceed a sulfur content of 15 ppm given the maximum sulfur test result on any MVNRLM diesel fuel batch described in paragraph (a) of this section that is additized with the additive package during the VAR period.

* * * * *

(d) If more than one additive package containing a static dissipater additive and/or red dye is used during a VAR period, then a separate VAR formula record must be created for MVNRLM diesel fuel additized for each of the additive packages used. In such cases, the amount of the each additive package used must be accurately and separately measured, either through the use of a separate storage tank, a separate meter, or some other measurement system that is able to accurately distinguish its use.

(e) Recorded volumes of MVNRLM diesel fuel and the additive package must be expressed to the nearest gallon (or smaller units), except that additive package volumes of five gallons or less must be expressed to the nearest tenth of a gallon (or smaller units). However, if the blender's equipment cannot accurately measure to the nearest tenth of a gallon, then such volumes must be rounded upward to the next higher gallon for purposes of determining compliance with this section.

(f) * * *

(1) *Automated blending facilities.* In the case of an automated additive package blending facility, for each VAR period, for each storage system for an additive package containing a static dissipater additive and/or red dye, and each additive package in that storage system, the following must be recorded:

(i)(A) The manufacturer and commercial identifying name of the package being reconciled, the maximum recommended treatment level, the potential contribution to the sulfur content of the finished fuel that might result when the additive package is used at its maximum recommended treatment level, the intended treatment level, and the contribution to the sulfur content of the finished fuel that would result when the additive package is used at its intended treatment level. The intended treatment level is the treatment level that the additive injection equipment is set to.

(B) The maximum recommended treatment level and the intended treatment level must be expressed in terms of gallons of the additive package per thousand gallons of MVNRLM diesel fuel, and expressed to four significant figures. If the additive package storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

(ii) The total volume of the additive package blended into MVNRLM diesel fuel, in accordance with one of the following methods, as applicable.

(A) For a facility which uses in-line meters to measure usage, the total volume of additive package measured, together with supporting data which includes one of the following: the beginning and ending meter readings for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(B) For a facility which uses a gauge to measure the inventory of the additive package storage tank, the total volume of additive package shall be calculated from the following equation:

$$\text{Additive package volume} = (A) - (B) + (C) - (D)$$

Where:

A = Initial additive package inventory of the tank

B = Final additive package inventory of the tank

C = Sum of any additions to additive package inventory

D = Sum of any withdrawals from additive package inventory for purposes other than the additization of MVNRLM diesel fuel.

(C) The value of each variable in the equation in paragraph (f)(1)(ii)(B) of this section must be separately recorded on the VAR formula record. In addition, a list of each additive package addition included in variable C and a list of each additive package withdrawal included in variable D must be provided, either on the formula record or as VAR supporting documentation.

(iii) The total volume of MVNRLM diesel fuel to which the additive package has been added, together with supporting data which includes one of the following: the beginning and ending meter measurements for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(iv) The actual concentration of the additive package, calculated as the total volume of the additive package added (pursuant to paragraph (f)(1)(ii) of this section), divided by the total volume of MVNRLM diesel fuel (pursuant to paragraph (f)(1)(iii) of this section). The concentration must be calculated and recorded to 4 significant figures.

(v) A list of each additive package concentration rate set for the additive package that is the subject of the VAR record, together with the date and description of each adjustment to any initially set concentration. The concentration adjustment information may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation. No concentration setting is permitted above the maximum recommended concentration supplied by the additive manufacturer, except as described in paragraph (f)(1)(vii) of this section.

(vi) The dates of the VAR period, which shall be no longer than thirty-one days. If the VAR period is contemporaneous with a calendar month, then specifying the month will fulfill this requirement; if not, then the beginning and ending dates and times of the VAR period must be listed. The times may be supplied on the VAR formula record or in supporting documentation. Any adjustment to any additive package concentration rate initially set in the VAR period shall terminate that VAR period and initiate a new VAR period, except as provided in paragraph (f)(1)(vii) of this section.

(vii) The concentration setting for the additive package injector may be changed from the concentration initially set in the VAR period without terminating that VAR period, provided that:

* * * * *

(D) If the correction is initiated only to rectify an equipment malfunction, and the amount of additive package used in this procedure is not added to MVNRLM diesel fuel within the compliance period, then this amount is subtracted from the additive package volume listed on the VAR formula record. In such a case, the addition of this amount of additive must be reflected in the following VAR period.

(viii) The measured sulfur level for each batch of MVNRLM diesel fuel to which the additive package is added during each VAR period. In cases where the storage tank that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, a measured sulfur level on each batch added to the storage tank during the current and previous VAR periods must be recorded.

(2) *Non-automated facilities.* In the case of a facility in which hand blending or any other non-automated method is used to blend the additive packages, for each additive package and for each batch of MVNRLM diesel fuel to which the additive package is being added, the following shall be recorded:

(i) The manufacturer and commercial identifying name of the additive package being reconciled, the maximum recommended treatment level, the potential contribution to the sulfur content of the finished fuel that might

result when the additive package is used at its maximum recommended treatment level, the intended treatment level, and the contribution to the sulfur content of the finished fuel that would result when the additive package is used at its intended treatment level.

(A) The maximum recommended treatment level and the intended treatment level must be expressed in terms of gallons of additive package per thousand gallons of MVNRLM diesel fuel, and expressed to four significant figures.

(B) If the additive package storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

* * * * *

(iii) The volume of added additive package.

(iv) The volume of the MVNRLM diesel fuel to which the additive package has been added.

* * * * *

(vi) The actual additive package concentration, calculated as the volume of added additive package (pursuant to paragraph (f)(1)(ii)(B) of this section), divided by the volume of MVNRLM diesel fuel (pursuant to paragraph (f)(1)(iii) of this section). The concentration must be calculated and recorded to four significant figures.

(vii) The measured sulfur level for each batch of MVNRLM diesel fuel to which the additive package is added during each VAR period. In cases where the storage tanks that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, a measured sulfur level on each batch added to the storage tank during the current and previous VAR periods must be recorded.

* * * * *

(5) *Calibration requirements for automated blending facilities.* Automated static dissipater additive package blenders must calibrate their additive package equipment at least once in each calendar half year, with the acceptable calibrations being no less than one hundred twenty days apart, except that calibrations may be closer in time so long as at least two calibrations meet the requirements to be in separate halves of the calendar year and no less than 120 days apart. Equipment recalibration is also required each time the static dissipater additive package is changed, unless written documentation indicates that the new additive package has the same viscosity as the previous additive package. Additive package change calibrations may be used to satisfy the semiannual requirement provided that the calibrations occur in the appropriate half calendar year and are no less than one hundred twenty days apart.

(6) * * *

(i) For all automated additive package blending facilities, documentation reflecting performance of the calibrations required by paragraph (f)(5) of this section, and any associated adjustments of the automated additive package injection equipment;

(ii) For all blending facilities that blend an additive package containing a static dissipater additive and/or red dye, product transfer documents for all such additive packages, and MVNRLM diesel fuel transferred into or out of the facility that is additized with an additive package containing a static dissipater additive and/or red dye;

(iii) For all automated additive package blending facilities that use an additive package containing a static dissipater additive and/or red dye, documentation establishing the brands (if known) of the MVNRLM diesel fuel which is the subject of the VAR formula record; and

(iv) For all hand blenders of an additive package that contains a static dissipater additive and/or red dye, the documentation, if in the party's possession, supporting the volumes of MVNRLM diesel fuel and additive package reported on the VAR formula record.

(7) *Document retention and availability.* All blenders of an additive package that contains a static dissipater additive and/or red dye shall retain the documents required under this section for a period of five years from the date the VAR formula records and supporting documentation are created, and shall deliver them upon request to the EPA Administrator or the Administrator's authorized representative.

(i) Except as provided in paragraph (f)(7)(iii) of this section, automated additive package blender facilities and hand-blender facilities which are terminals, which physically blend an additive packages that contains a static dissipater additive and/or red dye into MVNRLM diesel fuel, must make immediately available to EPA, upon request, the preceding twelve months of VAR formula records plus the preceding two months of VAR supporting documentation.

(ii) Except as provided in paragraph (f)(7)(iii) of this section, other hand-blending additive package facilities which physically blend additive package that contains a static dissipater additive and/or red dye into MVNRLM diesel fuel must make immediately available to EPA, upon request, the preceding two months of VAR formula records and VAR supporting documentation.

(iii) Facilities which have centrally maintained records at other locations, or have customers who maintain their own records at other locations for their proprietary additive package injection systems, and which can document this fact to the Agency, may have until the start of the next business day after the EPA request to supply VAR supporting documentation, or longer if approved by the Agency.

* * * * *

■ 32. A new § 80.616 is added to subpart I to read as follows:

§ 80.616 What are the enforcement exemptions for California diesel distributed within the State of California?

(a) For the purpose of this section, ''California diesel fuel'' is defined as any diesel fuel physically within the State of California that satisfies all requirements of Title 13, California Code of Regulations, Sections 2281–2285, and is sold, intended for sale, or made available for sale as a motor fuel in the State of California, subsequent to May 31, 2006.

(b) Any retailer or wholesale purchaser-consumer of California diesel fuel is, with regard to such diesel fuel, exempt from the labeling requirements contained in §§ 80.570, 80.571, 80.572, 80.573, and 80.574.

(c)(1) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the product transfer requirements of § 80.590, provided that the product transfer document contains the following statement:

''California diesel fuel. Maximum 15 ppm sulfur.''

(2) Product codes may be used to satisfy this product transfer document requirement.

(d) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the designation requirements of § 80.598, provided that:

(1) The refiner, importer, or distributor does not transfer custody of the California diesel fuel to facility outside the State of California;

(2) The fuel is intended to be sold or made available for sale in the State of California; and

(3) The PTD requirements in paragraph (f) of the section are satisfied.

(e) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the volume balance requirements of § 80.599.

(f) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the recordkeeping requirements under designate and track provisions of § 80.600.

(g) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the reporting requirements for the purposes of the designate and track provisions of § 80.601.

(h) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the recordkeeping requirements for entities in the MV or NRLM diesel fuel and diesel fuel additive production, importation, and distribution systems of §§ 80.592 and 80.602 except those relating to sampling and testing, under §§ 80.581, 80.584, 80.585, and 80.586.

(i) Any refiner or importer of California diesel fuel is, with regard to such diesel fuel, exempt from the annual reporting requirements for NRLM diesel under § 80.604.

■ 33. A new § 80.617 is added to subpart I to read as follows:

§ 80.617 How may California diesel fuel be distributed or sold outside of the State of California?

California diesel may be distributed or sold outside of the State of California provided the provisions of either paragraph (a) or (b) of this section are satisfied:

(a) *Distribution of taxed or dyed California diesel fuel.* California diesel fuel that is distributed from a truck loading terminal after such diesel has been taxed or dyed may be distributed or sold outside of the State of California, provided that it is accompanied by a Product Transfer Document that states: ''California diesel fuel. Maximum 15 ppm sulfur.''; or

(b) *Distribution of untaxed and undyed diesel California diesel fuel.* California diesel may be distributed or sold outside of the State of California without having been dyed or taxed provided that the requirements of either paragraph (b)(1) or (b)(2) of this section are satisfied. (Note that the requirements of IRS code 26 CFR part 48 along with other applicable requirements outside of this 40 CFR part 80 subpart I must also be satisfied.)

(1)(i) Prior to shipment outside the State of California, the California diesel fuel meets all requirements of § 80.616 and meets all of the requirements of 40 CFR part 80, subpart I that are not exempted under this section;

(ii) The California diesel fuel is shipped out of the state via pipeline;

(iii) The pipeline shipping the California diesel out of state maintains the California diesel fuel designation while the product is in the pipeline's custody;

(iv) The pipeline provides a product transfer document that clearly indicates that the product is designated as California diesel fuel;

(v) Upon delivery into the terminal, the terminal receiving the California diesel fuel redesignates it as motor vehicle diesel meeting the 15 ppm sulfur standard; and

(vi) The terminal includes the volumes of California diesel fuel redesignated as motor vehicle diesel fuel in the total volume of motor vehicle diesel designated meeting the 15 ppm sulfur standard received by the terminal, per the volume balance and anti-downgrading equations for motor vehicle diesel fuel found in § 80.599(b) and (e).

(2)(i) The California diesel fuel is delivered via pipeline to a terminal outside the State of California that has a tank dedicated to the receipt of California diesel fuel and which intends to distribute the diesel fuel from the dedicated tank back into the State of California;

(ii) The terminal must maintain the designation of the diesel fuel as ''California diesel fuel'' and not redesignate it to another product;

(iii) The product transfer documents for California diesel fuel distributed by a terminal outside of the state of California must indicate ''California diesel fuel. Maximum 15 ppm sulfur.''; and,

(iv) Any volume of California diesel fuel distributed by a terminal outside the state of California must be taxed or dyed and must be excluded from the terminal's volume balance equations under § 80.599.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2006–0224; FRL–8161–8]

RIN 2060–AN78

Technical Amendments to the Highway and Nonroad Diesel Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct, amend, and revise certain provisions of the Highway Diesel Rule, and the Nonroad Diesel Rule. This action proposes to correct additional errors and omissions from the previous rules, and make minor changes to the regulations to assist entities with regulatory compliance. Further, this action also proposes technical amendments resulting from discussions with various diesel stakeholders. These technical amendments would: provide a temporary increase in the sulfur testing tolerance, revise the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amend the alternative defense provisions to account for conductivity additives and red dye. This proposed action is intended to help facilitate compliance with the diesel fuel regulations and ensure a smooth transition to ultra low sulfur diesel fuel.

DATES: Comments must be received on or before May 31, 2006. If a hearing is requested, the request must be received by May 16, 2006. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0224 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Sutton.tia@epa.gov.*
- Fax: (734) 214–4816.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0224. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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 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.*

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Tia Sutton, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood Dr., Ann Arbor, MI 48105; telephone (734) 214–4018, fax (734) 214–4816, e-mail *sutton.tia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action will affect companies and persons that produce, import, distribute, or sell highway and/or nonroad diesel fuel. Affected Categories and entities include the following:

Category	NAICS Code [a]	Examples of potentially affected entities
Industry	324110	Petroleum refiners.
Industry	422710	Diesel fuel marketers and distributors.
Industry	484220	Diesel fuel carriers.

[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 affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **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 *http://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 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.
- 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.

C. How Can I Get Copies of This Document?

See the direct final rule EPA has published in the ''Rules and Regulations'' section of this **Federal Register** for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

II. Summary of Rule

The Highway Diesel rule, published on January 18, 2001 (66 FR 5002), is a comprehensive national program that will greatly reduce emissions from diesel engines by integrating engine and fuel controls as a system to gain the greatest air quality benefits. The Nonroad Diesel Rule was subsequently published on June 29, 2004 (69 FR 38958). The Nonroad Diesel Rule took a similar approach, covering nonroad diesel equipment and fuel to further the goal of decreasing harmful emissions. In 2005, we published two additional direct final rulemakings (70 FR 40889 was published on July 15, 2005 and 70 FR 70498 was published on November 22, 2005) to make technical amendments to those rules. We have chosen to propose a third action to correct additional errors and omissions from the previous rules, as well as include amendments developed following discussions with stakeholders throughout the diesel fuel industry. These discussions resulted in the following changes that are being proposed today, such as: (1) Providing a temporary increase in the sulfur testing tolerance; (2) revising the designate and track provisions to account for non-petroleum diesel fuels (*i.e.,* biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards; and, (3) amending the alternative defense provisions to account for conductivity additives and red dye. The proposed clarifications and corrections include: The allowance for early motor vehicle diesel credits to be traded across Credit Trading Areas, the assignment of Puerto Rico and the U.S. Virgin Islands to CTA 1, the allowance of shorter statements on product transfer documents (with EPA approval), the clarification that approved small refiners who have elected to use the ''gas-for-diesel'' small refiner option (§ 80.553 and § 80.554) may designate 15 ppm diesel fuel as motor vehicle diesel fuel or nonroad, locomotive, and marine diesel fuel, and other minor corrections to help facilitate compliance with EPA's diesel fuel regulations.

For further discussion on all of the proposed changes contained in this action, see the direct final rule EPA has published in the ''Rules and Regulations'' section of this **Federal Register.** This proposal incorporates by reference all of the reasoning, explanation, and regulatory text from the direct final rule.

Because EPA views the provisions of the action as noncontroversial and does not expect adverse comment, we are publishing a direct final rule in the ''Rules and Regulations'' section of this **Federal Register.** However, we are publishing this notice of proposed rulemaking to serve as the proposal to adopt the provisions in the direct final rule if adverse comments are filed. If we receive adverse comment on one or more distinct amendment, paragraphs, or sections of the direct final rulemaking, or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal of the proposed direct final rule in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments received in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of the direct final rulemaking for which we do not receive adverse comment will become effective according to the **DATES** section in the direct final rule, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the rule.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This action simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.,* biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. There are no new costs associated with this rule. Therefore, this proposed rule is not subject to the requirements of Executive Order 12866. A Final Regulatory Support Document was prepared in connection with the original regulations for the Highway Diesel Rule and the Nonroad Diesel Rule as promulgated on January 18, 2001 and June 29, 2004, respectively, and we have no reason to believe that our analyses in the original rulemakings were inadequate. The relevant analyses are available in the docket for the January 18, 2001 rulemaking (A–99–061) and the June 29, 2004 rulemaking (OAR–2003–0012 and A–2001–28) and at the following internet address: *http://www.epa.gov/cleandiesel.* The original action was submitted to the Office of Management

and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden, as it simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.,* biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations of the Highway Diesel Rule (66 FR 5002, January 18, 2001) and the Nonroad Diesel Rule (69 FR 38958, June 29, 2004) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0308 (EPA ICR #1718). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (202) 566–1672.

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

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

C. Regulatory Flexibility Act

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 rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) size standards 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 this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule would not impose any new requirements on small entities as it would merely correct errors and omissions, provide a temporary increase in the sulfur testing tolerance, revise the designate and track provisions to account for non-petroleum diesel fuels (*i.e.,* biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amend the alternative defense provisions to account for conductivity additives and red dye.

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), Pub. L. 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 adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This proposed rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.,* biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye.

Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

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

the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, imposes substantial direct compliance costs, and is not required by statute. However, if 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 regulation, these restrictions do not apply. 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 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 express 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 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. This direct final rule simply corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. Although Section 6 of Executive Order 13132 did not apply to the Highway Diesel Rule (66 FR 5002) or the Nonroad Diesel Rule (69 FR 38958), EPA did consult with representatives of various State and local governments in developing these rules. For this direct final action, EPA consulted with representatives of the California Air Resources Board and the Western States Petroleum Association (WSPA) for the amendments made which will affect refiners and distributors in California.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications as specified in Executive Order 13175. This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely corrects errors and omissions, provides a temporary increase in the sulfur testing tolerance, revises the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amends the alternative defense provisions to account for conductivity additives and red dye. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under 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, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant, and 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 adverse effect on the supply, distribution or use of energy. This action simply proposes to correct errors and omissions, provide a temporary increase in the sulfur testing tolerance, revise the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amend the alternative defense provisions to account for conductivity additives and red dye.

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. This action merely proposes to correct errors and omissions, provide a temporary increase in the sulfur testing tolerance, revise the designate and track provisions to account for non-petroleum diesel fuels (*i.e.*, biodiesel) and fuel that meets the California Air Resources Board's diesel fuel standards, and amend the alternative defense provisions to account for conductivity

additives and red dye. Thus, we have determined that the requirements of the NTTAA do not apply.

IV. Statutory Provisions and Legal Requirements

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 80

Fuel additives, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: April 20, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–3929 Filed 4–28–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
May 1, 2006

Part IV

The President

Proclamation 8007—National Charter Schools Week, 2006

Executive Order 13401—Responsibilities of Federal Departments and Agencies With Respect to Volunteer Community Service

Federal Register
Vol. 71, No. 83
Monday, May 1, 2006

Presidential Documents

Title 3—

The President

Proclamation 8007 of April 26, 2006

National Charter Schools Week, 2006

By the President of the United States of America

A Proclamation

Education is the gateway to a brighter future for our children and our Nation. During National Charter Schools Week, we celebrate charter schools' commitment to academic achievement, accountability, and innovation. We recognize the vital role charter schools play in fostering an America where children have the knowledge and skills they need to grow, succeed, and achieve their dreams.

As a publicly funded alternative to traditional public schools, charter schools have expanded our understanding of public education by embracing the spirit of discovery and providing innovative avenues for success. Almost 15 years after the founding of the first charter school, more than 3,600 charter schools in 40 states and the District of Columbia are teaching more than one million students. These institutions reflect our belief in the promise of America's youth and help fulfill our moral obligation to make sure that every child has a quality education.

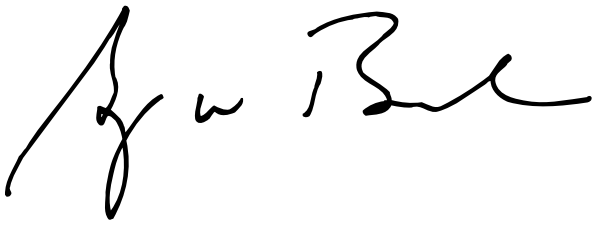
This year marks the fourth anniversary of the signing of the No Child Left Behind Act, which is helping schools close the achievement gap among America's youth. Using the same principles that guide No Child Left Behind, we are achieving educational excellence through charter schools by providing greater flexibility with Federal dollars and curriculum control at the local level. We are also providing parents with more information about school performance and school options and insisting on results through assessment and accountability.

In the aftermath of the devastating hurricanes that struck our Nation's Gulf Coast last year, charter schools are playing a major role in welcoming back school children affected by the storms. Because of their unique flexibility, many Gulf Coast charter schools were able to reopen quickly, and many of the public schools that have reopened in New Orleans now operate as charter schools. By enabling these children to continue their education, charter schools are helping families and demonstrating a deep compassion for America's students.

We must give every child the best opportunity to learn and succeed in life. Charter schools help prepare our next generation of leaders and help ensure that America continues to succeed in the world.

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 April 30 through May 6, 2006, as National Charter Schools Week. I appreciate our Nation's charter schools, teachers, and administrators, and I call on parents of charter school students to share their successes and help all Americans understand more about the important work of charter schools.

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



[FR Doc. 06–4131
Filed 4–28–06; 9:05 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13401 of April 27, 2006

Responsibilities of Federal Departments and Agencies With Respect to Volunteer Community Service

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to help ensure that the Federal Government supports and encourages volunteer community service, it is hereby ordered as follows:

Section 1. *Designation of a Liaison for Volunteer Community Service.* (a) The head of each agency shall, within 20 days after the date of this order, designate an officer or employee of such agency compensated at a level at or above the minimum level of pay of a member of the Senior Executive Service to serve under the authority of the head of the agency as the agency liaison for volunteer community service (Liaison).

(b) The Liaison in each agency shall promote and support community service on a voluntary basis among Federal employees, including those approaching retirement; promote the use of skilled volunteers; and facilitate public recognition for volunteer community service.

(c) The head of each agency shall prescribe arrangements within the agency for support and supervision of the Liaison that ensure high priority and substantial visibility for the function of the Liaison within the agency under this order.

(d) Each executive agency shall provide its Liaison with appropriate administrative support and other resources to meet the responsibilities of the Liaison under this order.

Sec. 2. *Goals and Responsibilities of the Liaison.* The Liaison shall foster within the Liaison's agency a culture of taking responsibility, service to others, and good citizenship. Toward that end, the Liaison shall:

(a) identify, catalog, and review all activities of the agency that relate to volunteer community service, including, but not limited to rules, orders, grant programs, external relations, and other policies and practices, and make such recommendations to the head of the agency for adjustments as may be appropriate;

(b) actively work with USA Freedom Corps to promote volunteer community service among agency employees by providing information about community service opportunities;

(c) coordinate within the agency actions to facilitate public recognition for volunteer community service;

(d) promote, expand, and enhance skilled volunteer community service opportunities;

(e) work with the USA Freedom Corps and the Director of the Office of Personnel Management (OPM) to consider any appropriate changes in agency policies or practices that are not currently consistent with OPM guidance;

(f) coordinate the awarding of the President's Volunteer Service Award to recognize outstanding volunteer service by employees within the agency; and

(g) act as a liaison with the USA Freedom Corps.

Sec. 3. *Administrative Provisions.* (a) The USA Freedom Corps shall provide such information with respect to volunteer community service programs

and activities and such advice and assistance as may be required by agencies in performing their functions under this order.

(b) Executive Order 12820 of November 5, 1992, is revoked.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) As used in this order:

(i) ''agency'' has the meaning of ''executive agency'' as defined in section 105 of title 5, United States Code; and

(ii) ''USA Freedom Corps'' means the Director of the USA Freedom Corps Office established by section 4 of Executive Order 13254 of January 29, 2002.

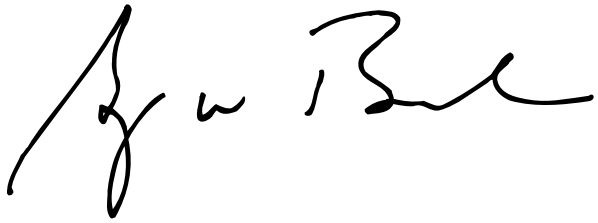
Sec. 4. *Reporting Provisions.* (a) Not later than 180 days from the date of this order and annually thereafter, each agency Liaison shall prepare and submit a report to the USA Freedom Corps that includes a description of the agency's activities in performing its functions under this order.

(b) A Liaison's first report under subsection (a) shall include annual performance indicators and measurable objectives for agency action approved by the head of the agency. Each report filed thereafter under subsection (a) shall measure the agency's performance against the indicators and objectives approved by the head of the agency.

Sec. 5. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

THE WHITE HOUSE,

April 27, 2006.



[FR Doc. 06–4132
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Federal Register

Vol. 71, No. 83

Monday, May 1, 2006

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25483–25738 1

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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 MAY 1, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
- Mideast; published 4-20-06
- Northeast et al.; published 5-1-06

Spearmint oil produced in—
- Far West; published 3-30-06

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:
- Christmas and Easter cactus in growing media from Netherlands and Denmark; published 3-31-06
- Citrus from Peru; published 5-1-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific cod; published 5-1-06
- Atlantic coastal fisheries cooperative management—
  - American lobster; published 3-14-06
- Atlantic highly migratory species—
  - Commercial shark management measures; published 3-31-06
- Northeastern United States fisheries—
  - Monkfish; published 4-25-06
  - Northeast multispecies; published 4-13-06
  - Northeast multispecies; published 4-28-06
  - Northeast multispecies; published 4-28-06
- West Coast States and Western Pacific fisheries—
  - Pacific halibut; published 4-26-06

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps participants, programs, and applicants:
- Professional corps programs; AmeriCorps grant applications; published 3-2-06

ENERGY DEPARTMENT

Acquisition regulations:
- Contractor make-or-buy plans; published 3-31-06

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Arizona; published 2-28-06

Air quality implementation plans; approval and promulgation; various States:
- Iowa; published 2-28-06
- Maryland; published 3-31-06
- Pennsylvania; published 3-31-06

Great Lakes Legacy Act of 2002; implementation; published 5-1-06

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- New York; published 4-5-06
- Texas; published 4-26-06
- Various States; published 4-5-06

FEDERAL TRADE COMMISSION

Appliances, consumer; energy consumption and water use information in labeling and advertising:
- Comparability ranges—
  - Compact clothes washers, refrigerators, refrigerator-freezers, and freezers; published 1-31-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Batch certification requirements, etc.; obsolete and redundant regulations removed; published 3-31-06

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:
- Single family mortgage insurance—
  - Default reporting period; published 3-31-06

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:
- Geological and geophysical explorations; proprietary terms and data disclosure; published 3-30-06

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:
- Allocation of assets—
  - Benefits payable in terminated plans; allocation of assets, interest assumptions for valuing and paying benefits; published 4-14-06

STATE DEPARTMENT

Personnel:
- Foreign Service Retirement and Disability Fund overpayments; notification and administrative determination procedures; published 3-31-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Aerospatiale; published 3-27-06
- Airbus; published 3-27-06
- Empresa Brasileira de Aeronautica S.A. (EMBRAER); published 3-27-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

National Organic Program:
- Organic and nonorganic product use (livestock) Harvey v. Johanns; revisions; comments due by 5-12-06; published 4-27-06 [FR 06-04006]

Olives grown in California; comments due by 5-12-06; published 3-13-06 [FR 06-02367]

Potato research and promotion plan; comments due by 5-8-06; published 3-7-06 [FR 06-02117]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:
- Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Freedom of information and public information:
- Meat or poultry product recalls; retail consignees; lists availability; comments due by 5-8-06; published 3-7-06 [FR 06-02125]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands king and tanner crab; comments due by 5-9-06; published 4-24-06 [FR E6-06030]
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands groundfish, crab, salmon and scallop; comments due by 5-8-06; published 3-22-06 [FR 06-02706]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 5-11-06; published 4-11-06 [FR 06-03468]

COMMODITY FUTURES TRADING COMMISSION

Securities futures products:
- Debt securities indexes and security futures on debt securities; application of narrow-based security index definition; comments due by 5-10-06; published 4-10-06 [FR 06-03188]

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:
- Simplified acquisition procedures financing; comments due by 5-12-06; published 3-13-06 [FR E6-03518]

Air pollutants, hazardous; national emission standards:
- Hazardous waste combustors; comments due by 5-8-06; published 3-23-06 [FR 06-02703]

Air programs:
- Ambient air quality standards, national—

Exceptional events; data treatment; comments due by 5-9-06; published 3-10-06 [FR 06-02179]
Stratospheric ozone protection—
Aircraft fire extinguishing vessels containing halon-1301; importation reporting and recordkeeping requirements; comments due by 5-11-06; published 4-11-06 [FR 06-03461]
Aircraft fire extinguishing vessels containing halon-1301; importation reporting and recordkeeping requirements; comments due by 5-11-06; published 4-11-06 [FR 06-03462]
Essential use allowances allocation; comments due by 5-11-06; published 4-11-06 [FR E6-05329]
Air quality implementation plans:
Preparation, adoption, and submittal—
8-hour ozone national ambient air quality standard; implementation; public hearing; comments due by 5-12-06; published 3-27-06 [FR 06-02909]
Preparation, adoption, submittal—
Corn milling facilities; prevention of significant deterioration, nonattainment new source review; comments due by 5-8-06; published 3-9-06 [FR 06-02148]
Air quality implementation plans; approval and promulgation; various States:
Arizona; comments due by 5-12-06; published 4-12-06 [FR 06-03405]
California; comments due by 5-11-06; published 4-11-06 [FR 06-03401]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Ethylenediaminetetraacetic acid chemicals; comments due by 5-8-06; published 3-8-06 [FR 06-02106]
Flumiclorac pentyl; comments due by 5-8-06; published 3-8-06 [FR 06-02151]
Spinosad; comments due by 5-8-06; published 3-8-06 [FR 06-01939]
Toxic substances:
Chemicals of interest to Occupational Safety and Health Administration; in vitro dermal absorbtion rate testing requirements; comments due by 5-12-06; published 4-12-06 [FR 06-03491]
Polymer premanufacture notification exemption rule—
Perfluorinated polymers; exclusion; comments due by 5-8-06; published 3-7-06 [FR 06-02152]
Significant new uses—
Perfluoroalkyl sulfonates; comments due by 5-10-06; published 4-10-06 [FR 06-03400]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Telephone Consumer Protection Act; implementation; comments due by 5-11-06; published 4-26-06 [FR E6-06022]
Radio stations; table of assignments:
Arkansas and Missouri; comments due by 5-8-06; published 4-12-06 [FR E6-05110]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:
Orthopedic devices—
Intervertebral body fusion device; reclassification; comments due by 5-10-06; published 2-9-06 [FR E6-01736]

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Dominican Republic-Central America Free Trade Agreement:
Preferential tariff treatment; retroactive application; comments due by 5-8-06; published 3-7-06 [FR 06-02070]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
Massachusetts; comments due by 5-8-06; published 4-6-06 [FR E6-04900]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
Indian housing block grant program; self-insurance plans; comments due by 5-8-06; published 3-7-06 [FR E6-03186]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Flat-tailed horned lizard; comments due by 5-8-06; published 4-21-06 [FR E6-05895]
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest; regulations revision; comments due by 5-12-06; published 4-12-06 [FR E6-05223]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Tennessee; comments due by 5-8-06; published 4-6-06 [FR 06-03260]

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:
Emergency health plan discontinuance; comments due by 5-8-06; published 3-7-06 [FR 06-02081]
Correction; comments due by 5-8-06; published 3-10-06 [FR C6-02081]

SECURITIES AND EXCHANGE COMMISSION

Securities futures products:
Debt securities indexes and security futures on debt securities; application of narrow-based security index definition; comments due by 5-10-06; published 4-10-06 [FR 06-03188]

SOCIAL SECURITY ADMINISTRATION

Federal claims collection:
Federal salary offset; comments due by 5-12-06; published 3-13-06 [FR E6-03509]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 5-11-06; published 4-11-06 [FR E6-05246]
Bombardier; comments due by 5-9-06; published 3-10-06 [FR 06-02236]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 5-11-06; published 4-11-06 [FR 06-03440]
Honeywell; comments due by 5-8-06; published 3-8-06 [FR E6-03260]
McDonnell Douglas; comments due by 5-12-06; published 3-28-06 [FR E6-04443]
Short Brothers; comments due by 5-8-06; published 4-12-06 [FR E6-05357]
Airworthiness standards:
Special conditions—
Airbus Model A380-800 airplane; comments due by 5-12-06; published 3-28-06 [FR 06-02973]
Airbus Model A380-800 airplane; comments due by 5-12-06; published 3-28-06 [FR E6-04494]
Cessna Model 510 series airplanes; comments due by 5-8-06; published 4-6-06 [FR 06-03294]
Transport category airplanes—
Fuel tank flammability reduction; comments due by 5-8-06; published 11-23-05 [FR 05-23109]
Fuel tank flammability reduction; comments due by 5-8-06; published 3-21-06 [FR E6-04025]
Airworthiness standards:
Special conditions—
McDonnell Douglas Model DC-8-72F airplanes; comments due by 5-11-06; published 4-11-06 [FR 06-03423]
Class E airspace; comments due by 5-8-06; published 3-24-06 [FR 06-02878]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property; public hearing; comments due by 5-8-06; published 2-7-06 [FR 06-01038]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Money services businesses; banking services provision; comments due by 5-9-

06; published 3-10-06 [FR E6-03373]
Dominican Republic-Central America Free Trade Agreement:
Preferential tariff treatment; retroactive application; comments due by 5-8-06; published 3-7-06 [FR 06-02070]
VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Informed consent; time period extension and witness requirement modification for signature consent; comments due by 5-8-06; published 3-9-06 [FR E6-03290]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4979/P.L. 109–218

Local Community Recovery Act of 2006 (Apr. 20, 2006; 120 Stat. 333)

Last List April 17, 2006

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1	(869–060–00001–4)	5.00	[4]Jan. 1, 2006
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2003 Compilation and Parts 100 and 101)	(869–056–00003–1)	35.00	[1] Jan. 1, 2005
4	(869–060–00004–6)	10.00	Jan. 1, 2006
5 Parts:			
1–699	(869–060–00005–4)	60.00	Jan. 1, 2006
700–1199	(869–060–00006–2)	50.00	Jan. 1, 2006
1200–End	(869–060–00007–1)	61.00	Jan. 1, 2006
6	(869–060–00008–9)	10.50	Jan. 1, 2006
7 Parts:			
1–26	(869–060–00009–7)	44.00	Jan. 1, 2006
27–52	(869–060–00010–1)	49.00	Jan. 1, 2006
53–209	(869–060–00011–9)	37.00	Jan. 1, 2006
210–299	(869–060–00012–7)	62.00	Jan. 1, 2006
300–399	(869–060–00013–5)	46.00	Jan. 1, 2006
400–699	(869–060–00014–3)	42.00	Jan. 1, 2006
700–899	(869–060–00015–1)	43.00	Jan. 1, 2006
900–999	(869–060–00016–0)	60.00	Jan. 1, 2006
1000–1199	(869–060–00017–8)	22.00	Jan. 1, 2006
1200–1599	(869–060–00018–6)	61.00	Jan. 1, 2006
1600–1899	(869–060–00019–4)	64.00	Jan. 1, 2006
1900–1939	(869–060–00020–8)	31.00	Jan. 1, 2006
1940–1949	(869–060–00021–6)	50.00	Jan. 1, 2006
1950–1999	(869–060–00022–4)	46.00	Jan. 1, 2006
2000–End	(869–060–00023–2)	50.00	Jan. 1, 2006
8	(869–060–00024–1)	63.00	Jan. 1, 2006
9 Parts:			
1–199	(869–060–00025–9)	61.00	Jan. 1, 2006
200–End	(869–060–00026–7)	58.00	Jan. 1, 2006
10 Parts:			
1–50	(869–060–00027–5)	61.00	Jan. 1, 2006
51–199	(869–060–00028–3)	58.00	Jan. 1, 2006
200–499	(869–060–00029–1)	46.00	Jan. 1, 2006
500–End	(869–060–00030–5)	62.00	Jan. 1, 2006
11	(869–060–00031–3)	41.00	Jan. 1, 2006
12 Parts:			
1–199	(869–060–00032–1)	34.00	Jan. 1, 2006
200–219	(869–060–00033–0)	37.00	Jan. 1, 2006
220–299	(869–060–00034–8)	61.00	Jan. 1, 2006
300–499	(869–060–00035–6)	47.00	Jan. 1, 2006
500–599	(869–060–00036–4)	39.00	Jan. 1, 2006
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–060–00038–1)	50.00	Jan. 1, 2006
13	(869–060–00039–9)	55.00	Jan. 1, 2006
14 Parts:			
1–59	(869–060–00040–2)	63.00	Jan. 1, 2006
60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
140–199	(869–060–00042–9)	30.00	Jan. 1, 2006
200–1199	(869–060–00043–7)	50.00	Jan. 1, 2006
1200–End	(869–060–00044–5)	45.00	Jan. 1, 2006
15 Parts:			
0–299	(869–060–00045–3)	40.00	Jan. 1, 2006
300–799	(869–060–00046–1)	60.00	Jan. 1, 2006
800–End	(869–060–00047–0)	42.00	Jan. 1, 2006
16 Parts:			
0–999	(869–060–00048–8)	50.00	Jan. 1, 2006
1000–End	(869–060–00049–6)	60.00	Jan. 1, 2006
17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
200–239	(869–056–00052–9)	58.00	Apr. 1, 2005
240–End	(869–056–00053–7)	62.00	Apr. 1, 2005
18 Parts:			
1–399	(869–056–00054–5)	62.00	Apr. 1, 2005
400–End	(869–056–00055–3)	26.00	[6]Apr. 1, 2005
19 Parts:			
1–140	(869–056–00056–1)	61.00	Apr. 1, 2005
141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–056–00058–8)	31.00	Apr. 1, 2005
20 Parts:			
1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–056–00060–0)	64.00	Apr. 1, 2005
500–End	(869–056–00061–8)	63.00	Apr. 1, 2005
21 Parts:			
1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–056–00069–3)	58.00	Apr. 1, 2005
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–056–00071–5)	63.00	Apr. 1, 2005
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
*500–599	(869–060–00098–4)	12.00	[5]Apr. 1, 2006
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–056–00128–2)	50.00	July 1, 2005
300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–056–00152–5)	29.00	July 1, 2005
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
87–99	(869–056–00157–6)	60.00	July 1, 2005
100–135	(869–056–00158–4)	45.00	July 1, 2005
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
700–789	(869–056–00167–3)	61.00	July 1, 2005
790–End	(869–056–00168–1)	61.00	July 1, 2005
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

*[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 2006

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
May 1	May 16	May 31	June 15	June 30	July 31
May 2	May 17	June 1	June 16	July 3	July 31
May 3	May 18	June 2	June 19	July 3	August 1
May 4	May 19	June 5	June 19	July 3	August 2
May 5	May 22	June 5	June 19	July 5	August 3
May 8	May 23	June 7	June 22	July 7	August 7
May 9	May 24	June 8	June 23	July 10	August 7
May 10	May 25	June 9	June 26	July 10	August 8
May 11	May 26	June 12	June 26	July 10	August 9
May 12	May 30	June 12	June 26	July 11	August 10
May 15	May 30	June 14	June 29	July 14	August 14
May 16	May 31	June 15	June 30	July 17	August 14
May 17	June 1	June 16	July 3	July 17	August 15
May 18	June 2	June 19	July 3	July 17	August 16
May 19	June 5	June 19	July 3	July 18	August 17
May 22	June 6	June 21	July 6	July 21	August 21
May 23	June 7	June 22	July 7	July 24	August 21
May 24	June 8	June 23	July 10	July 24	August 22
May 25	June 9	June 26	July 10	July 24	August 23
May 26	June 12	June 26	July 10	July 25	August 24
May 30	June 14	June 29	July 14	July 31	August 28
May 31	June 15	June 30	July 17	July 31	August 29